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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 9

BEATRICE LYNUM, PETITIONER,

vs.

ILLINOIS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 14, 1961
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

No. 35748

PEOPLE STATE OF ILLINOIS, Defendant in Error

vs.

BEATRICE LYNUMN, Plaintiff in Error

[fol. C] [File endorsement omitted]

[fol. 1] Writ of Error to Criminal Court of Cook County 59–212

Honorable Harold P. O'Connell, Judge Presiding.

ABSTRACT OF RECORD—Filed February 29, 1960

Placita and impanelling of Grand Jury.

Indictment returned.

Count I of the indictment charges a sale of narcotics in words and figures as follows: (Omitting formal parts)

Count 1 The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that one Beatrice Lynumn late of the County of Cook, on the [fol. 2] seventeenth day of January in the year of our Lord one thousand nine hundred and fifty nine in said County of Cook, in the State of Illinois aforesaid, unlawfully, feloniously, wilfully and knowingly sold to James Zeno for lawful money of the United States of America, otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity (the exact quantity of which is

unknown to said Grand Jurors), of a certain narcotic drug, to wit: cannabis, sometimes called marijuana, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Count II charges a felonious dispensing of narcotics in words and figures, to wit:

Count 2 The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one Beatrice Lynumn late of the County of Cook, on the seventeenth day of January in the year of our Lord one thousand nine hundred and fifty nine in said County of Cook, in the State of [fol. 3] Illinois aforesaid, unlawfully, feloniously, wilfully and knowingly dispensed to James Zeno otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, quantity (the exact quantity of which is unknown to said Grand Jurors) of a certain narcotic drug, to wit: cannabis, sometimes called marijuana, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Count III of said indictment charges possession of narcotics in words and figures, to wit:

Count 3 The Grand Jurors aforesaid, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one Beatrice Lynumn late of the County of Cook, on the seventeenth day of January in the year of our Lord one thousand nine hundred and fifty nine in said County of Cook, in the State of Illinois aforesaid, unlawfully, feloniously, wilfully and knowingly possessed and had under her control otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, [fol. 4] quantity (the exact quantity of which is un-

known to said Grand Jurors), of a certain narcotic drug, to wit: cannabis, sometimes called marijuana, contrary to the Statute, and against the peace and dignity of the same. People of the State of Illinois: Benjamin S. Adamowski, State's Attorney.

Indictment endorsed.

Written motion of defendant to quash indictment (omitting the formal parts), in words and figures, to wit:

MOTION TO QUASH

Now comes the defendant, Beatrice Lynumn, and moves this Honorable Court to Quash the Indictment in this cause; and in support of said motion she assigns the following reasons:

1. The indictment fails to charge a crime.
2. The indictment fails to set forth sufficient facts to charge the commission of any offense.
3. No sufficient facts are set forth to apprise the defendant of the nature of the accusation which she is called upon to defend against.
4. Under the indictment in this cause, the defendant would be unable to plead former acquittal or former conviction, as no sufficient facts are set forth.
5. The indictment is too vague, indefinite and uncertain to form the basis of a criminal prosecution.

[fol. 5] 6. The indictment does not allege that the substance which the defendant possessed was cannabis sativa from which the resin had not been extracted; inasmuch as every kind of cannabis is not a narcotic drug, the particular kind of cannabis must be specifically set forth.

7. Marijuana itself was included in the 1931 statute; but it was omitted from the 1935 Act and has never been reinserted although nearly a dozen legislatures have met since the Supreme Court decided the case of People vs Sowrd, 370 Ill. 140.

8. A mere reading of the indictment, and each count thereof, will show such an inconsistency and such an incongruity as well as such a duplicity as to authorize the court in dismissing same.

9. A mere reading of the indictment and each count thereof will show that it is contrary to law to file such an indictment or to prosecute a defendant thereon.

10. The said indictment is otherwise vague, indefinite and uncertain.

Wherefore defendant prays that the indictment be quashed.

Motion to quash denied. Defendant arraigned; enters plea of not guilty.

Motion of defendant for list of witnesses.

Motion of defendant (in writing) to suppress evidence filed.

Petition in support of motion to suppress (omitting the formal parts) in words and figures, to wit:

[fol. 6]

PETITION IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE, AND TO DISCHARGE THE DEFENDANT

1. Beatrice Lynumn respectfully represents that she is the defendant in this cause; that she was unlawfully arrested on to-wit, January 17, 1959; that pursuant to said unlawful arrest, her premises where she maintains her private home, residence and dwelling, were invaded and certain evidence was obtained therefrom which the prosecuting officials now threaten to use in evidence against her; that same consisted of currency, oral statements, etc.; that after her unlawful arrest and after the unlawful search of her private dwelling house, the police officers who unlawfully arrested her and who unlawfully searched her premises, then compelled her to make a telephone call under threats against her.

2. Petitioner further represents that on, to wit: January 17, 1959, while petitioner was violating no law and while she was not committing any felony, misdemeanor, or breach of the peace, either in or out of the presence of police officers, and while she was lawfully in her own private dwelling house, not creating any noise or disturbance, or breach of the peace, and doing absolutely nothing except peacefully being in her dwelling house, she was seized by certain police officers, money taken out of her hand and she was arrested.

[fol. 7] 3. Petitioner further represents that the said police officers had no warrant to arrest her; nor did they have any warrant to enter her premises, or to search her premises, and their presence in her home was against her will, without her permission, and violated her constitutional right to be secure against unreasonable search and seizure, both as to her person and as to her home and effects; and petitioner further alleges that said police officers had no process whatsoever for the doing of the aforementioned things, and petitioner likewise represents that they had no reasonable grounds, or cause, or occasion to believe that this petitioner was violating any law, and no reasonable grounds existed for entering her premises and seizing her and searching her and her premises as aforesaid; that at all times herein mentioned the said police officers acted with force and with violence and with pisto's drawn, and acquiescence in that action at that time was her submission to force and violence and was in nowise a consent on her part.

4. Petitioner further represents that an additional reason exists for her discharge and for the suppression of all evidence obtained against her. That is to say, that immediately following the aforesaid unconstitutional invasion of her private home, and unconstitutional seizure of her person, the said police officers, acting in unison and in concert [fol. 8] each with the other, did in conversation with this petitioner urge petitioner to make a telephone call and did urge petitioner to arrange for a purchase of narcotic; that this happened while petitioner was in custody; that the suggestion of her committing this offense of purchasing and possessing narcotic originated in the minds of the

police officers for the reason that this petitioner, who is of sound and disposing mind and memory, and who is not demented in any way, would never have voluntarily of her own initiative telephoned anyone to meet her and deliver narcotics to her; petitioner affirmatively alleges that at the instigation of the police officers and in pursuance of a design which originated solely in the minds of the police officers, this petitioner did make a telephone call; that this defendant is now being prosecuted for doing things which the police officers encouraged her to do, and which she would not have done except for the action of the police officers, to-wit, make a phone call; that it is unfair in law and abhorrent to justice to prosecute and punish this petitioner for the doing of that which the police officers encouraged her to do while she was under arrest, while she was in custody of such police officers with drawn pistols, and while she was without benefit of counsel; that under [fol. 9] the indictment and under the bill of particulars in this case, it is impossible to separate that portion of the case which involves entrapment into making a phone call with the other portions of the case, and so this petitioner should be completely exonerated and discharged from prosecution.

5. Petitioner further represents that she was affirmatively promised by the arresting officers that, "It would go light," with her if she would do as the police officers suggested, which is as above set forth; that said statement to this petitioner meant only one thing, to-wit: that petitioner would not be prosecuted but would be discharged; that petitioner and the police officers understood and accepted such interpretation, and that relying on said interpretation, petitioner made a telephone call which resulted in her prosecution.

Wherefore, petitioner prays that this Honorable Court enter an order suppressing all evidence against her, and enter an order for her discharge, and for such other and further relief as to this Court may seem meet.

(Petition properly verified.)

Motion to suppress evidence heard; and sustained.

[fol. 10] Motion to suppress evidence sustained. Defendant waives trial by jury. Trial commenced.

Trial concluded; court finds defendant guilty of the crime of "Unlawful Sale and Possession of Narcotic Drugs in Manner and Form as Charged in the Indictment".

Defendant files written motion for new trial which (omitting formal parts), is in words and figures, to-wit:

MOTION FOR NEW TRIAL

Now comes the defendant, Beatrice Lynum, and moves this Honorable Court to grant to her a new trial in this cause; and in support of her motion for new trial she assigns the following reasons:

1. The Court erred in overruling her motion to quash the indictment.

2. The Court erred in overruling her motion to suppress all of the evidence in this cause; and the action of the Court in sustaining the motion to suppress as to some of the evidence only, constitutes reversible error.

3. The Court erred in receiving in evidence, each and every exhibit so received on behalf of the State.

[fol. 11] 4. The Court erred in admitting incompetent evidence offered by the State. Moreover there was no proper showing made of the care and custody of the people's exhibits, and so it was error to receive them into evidence without such showing.

5. The Court erred in rejecting competent evidence offered on behalf of the defendant.

6. The Court erred in receiving into evidence incriminating statements, admissions, and purported confessions of the defendant, made to the police officers after the police officers had admittedly promised the defendant leniency, a reward, and freedom from prosecution.

7. The Court erred in admitting into evidence admissions and purported confessions made by the defendant

without having given to the defendant prior notice of the State's intention so to do; and the action of the State's Attorney in notifying the defendant that oral confessions given on January 18, 1959 would be introduced, was not a sufficient notice under the statute to authorize the introduction into evidence of so-called confessions made on January 17, 1959. The entry of the police into the private home of the defendant was an unwarranted invasion of her constitutional rights; and all evidence obtained thereafter was [fol. 12] incompetent, and the Court erred in admitting such evidence against the defendant.

8. The Court erred in denying the various motions of the defendant to strike irrelevant, immaterial, and incompetent evidence introduced by the prosecution.

9. The Court erred in receiving into evidence immaterial, irrelevant, and incompetent evidence against the defendant; and the Court likewise erred in refusing to strike same on motion.

10. The Court erred in conducting an examination of witnesses on the Court's own motion as such action of the Court denied the defendant a fair trial.

11. The Court erred in restricting counsel for the defendant in his cross-examination of the State's witnesses and in restricting his direct examination of the defendant's witnesses.

12. The Court erred in permitting too great a latitude in the cross-examination by the State's Attorney.

13. The evidence is insufficient to sustain the finding in this case.

14. The finding is contrary to the law and the evidence.

15. The Court erred in excluding competent and relevant evidence offered by the defendant.

[fol. 13] 16. It was prejudicial error to receive any evidence regarding statements, purported admissions or confessions, or declarations against interest, which were made after the police officer testified on his examination in chief

that he promised the defendant leniency and rewards for the making of such statements.

17. The Court erred in permitting the State's Attorney to cross-examine defense witnesses on incompetent, irrelevant, and immaterial matters.

18. The Court erred in sustaining each objection offered by the State to defense testimony; and the Court likewise erred in overruling each objection offered by the defendant to the State's testimony.

19. The evidence in this case preponderates in favor of the defendant.

20. The evidence offered by the State is unsatisfactory, uncorroborated in its major details, is contradictory, and is otherwise wholly insufficient to authorize a conviction; whereas the testimony of the defendant is positive, direct, and unimpeached in most instances and is corroborated to a great extent by the State's evidence; and same is therefore sufficient to raise a reasonable doubt of the defendant's guilt.

[fol. 14] 21. The defendant was not proven guilty beyond a reasonable doubt.

22. During the course of the trial, the duly elected State's Attorney of this County made an unwarranted, uncalled for, unjustified, unfounded, and wholly indefensible verbal assault upon the trial judge in this cause; and same was made, not in court, but to the press, and was made while this cause was in progress; and defendant claims that her right to a fair trial was violated by the aforesaid attack on the Court, sitting as trier of fact, during the course of the trial of her case. And in this connection, defendant here and now offers to prove by the statements made in the press, as to the exact nature and kind of unwarranted verbal assault herein referred to; and defendant asks that a day certain be set to enable her to introduce evidence and exhibits to prove this point; and she asks 10 days time within which to make this proof.

23. The aforesaid action of the State's Attorney has denied the defendant a fair and impartial trial.

24. The record in this cause, in numerous other respects which will be pointed out during oral argument, and which are not waived but reserved for oral argument, abounds in error so fundamental as to necessitate a new trial, and the [fol. 15] trial in this cause should be held to be a nullity.

Wherefore, defendant prays that this Honorable Court will enter an order granting to her a new trial.

By leave of court, permission granted to defendant to file written amendment to motion for new trial which (omitting the formal parts), is in words and figures, to-wit:

AMENDMENT TO MOTION FOR NEW TRIAL

Now comes the defendant, Beatrice Lynumn, and by leave by court first had and obtained, she files this as her amendment to be attached to her motion for new trial; and assigns the following additional reasons: All being in addition to all other reasons heretofore assigned.

1. There is a fatal variance between the allegations in the indictment and the proof at the trial; that is to say, the indictment alleges that the quantity of narcotics in question was unknown to the grand Jurors; whereas it developed at the trial by the testimony of Captain Dragel that he knew immediately after the arrest of the defendant as to the exact quantity of narcotics involved. The affirmative evidence, therefore, shows that the quantity of narcotics in question could easily have been made known to the grand jury.

[fol. 16] 2. It was incumbent upon the State to prove that the quantity of narcotics was in fact unknown to the grand jury; and under the authority of People vs. Hunt, 251 Ill. 446, the failure to prove that the quantity was unknown to the grand jury, or where it appears that the grand jury could easily have ascertained the quantity; in either such event, the motion for new trial should be granted and the defendant discharged from further prosecution under this indictment.

PETITION IN SUPPORT OF MOTION FOR NEW TRIAL

Beatrice Lynumn represents:

1. That she is the defendant in this cause; that trial of her case commenced on to-wit, June 18, 1959; that the trial was concluded on to-wit, June 22, 1959.

2. That on each of four (4) successive days beginning with the commencement of her trial; that is to say, on June 18; June 19, June 20, and June 21, 1959, and on each individual day, the State's Attorney of this county lashed out against the trial judge in this cause; that said attack was unwarranted as set forth in paragraph 22 of petitioner's motion for new trial.

3. Petitioner further represents that she is informed and believes, and on information and belief, states the fact to [fol. 17] be that the statements attributed to the State's Attorney in the attached newspaper clippings were in truth and in fact made by the State's Attorney of this county; that she is further informed and believes, and on information and belief so states the fact to be, that the said attack on the trial judge in this cause was made on the dates mentioned and at the times mentioned and during the pendency of her case; that the attack as is shown in detail by the attached newspaper clippings is unwarranted and uncalled for; that its effect upon the emotions of the trier of fact, the Court, in this case, tended to deprive her of a fair and impartial trial.

4. Petitioner further states that the exhibits attached hereto are, by this reference, made a part and parcel of this petition, the same as though set forth herein verbatim.

5. Petitioner further represents that the State's Attorney of this county should be called upon to answer this petition; and to explain the reason for the unwarranted attack upon the trial court; and said matter should be set for hearing on petition and answer on a short day to be fixed by the Court.

6. Petitioner further represents that she is informed and believes, and on information and belief states the fact

[fol. 18] to be that in addition to the news items attached hereto, that various other news items appeared, or to the same general effect, in the *Chicago Daily Tribune* and the *Chicago Sun Times;* that articles from the last two named papers will be exhibited at the time of the trial; said articles not having been obtained in time to attach to the petition at the time said petition was being drafted.

Wherefore, petitioner prays that this Honorable Court will enter an order requiring the State's Attorney to file answer to this petition; and that this Court will further, set the matter down for hearing on petition and answer; and that finally, on hearing of this matter, that the Court will enter an order finding that this defendant has been denied a fair trial, and will enter a further order awarding to this defendant a new trial in the premises.

(Petition properly verified.)

Petition in support of motion for new trial. (See abstract Pages 16-18.)

Exhibits attached to motion for new trial.

[fol. 19] Newspaper articles in support of petition for new trial.

Evidence envelope with notations on front and back.

Evidence envelope with notations on front and back.

Police Report of narcotics with notations on back.

Evidence envelope with notations on back.

Receipt for exhibits (police record).

[fol. 20] Judgment of the court that defendant, Beatrice Lynum, is guilty of the crime of unlawful sale and possession of narcotic drugs in manner and form as charged in the indictment.

Motion of defendant in arrest of judgment made and denied.

Defendant sentenced to a minimum of 10 years and a maximum of 11 years in penitentiary.

Mittimus stayed to October 9, 1959.

Bill of Exceptions marked "presented" September 25, 1959 and filed with the Clerk; mittimus stayed to November 16, 1959.

Bill of Exceptions heretofore presented now signed, sealed, and approved November 6, 1959, nunc pro tunc as of September 25, 1959.

Order of Court that original Bill of Exceptions may be incorporated in making up the transcript of record for transmission to the Supreme Court of Illinois.

Index to Bill of Exceptions.

Bill of Exceptions.

Evidence on Motion to Suppress.

[fol. 21]

.....

The Motion to Suppress Was Decided in Favor of the Defendant and Adversely to the State Hence, Plaintiff in Error Deems it Unnecessary to Abstract the Whole of This Evidence. Therefore, a Resume of Same Is Set Forth Below to Give This Court a General Outline of Same, as Well as to Show Any Difference in Testimony Given on the Motion to Suppress From That Given on the Trial.

.....

Testimony of Auvern Harrington, witness for defendant on Motion to Suppress. He testified that he was an Electrical Contractor residing at 408 East 88th Street; described the physical layout of the premises; said he was manager of the building and collector of rents. His specific purpose there was to collect his $90.00 rent from defendant. He described the arrest and the actions of the police, and was troubled lest a robbery be taking place.

Defendant, Beatrice Lynumn, on the Motion to Suppress identified herself; identified the physical layout of the prem-
[fol. 22] ises, and her telephone call from Zeno and his subsequent visit to her apartment. She testified that Zeno owed her some money and came to pay it. When he left her

apartment, he called back for his scarf. When she opened the door to tell him he had not left a scarf, she was placed under arrest by Officer Sims. She further testified that there was no process of any kind for her arrest; that there was no noise nor disturbance of any kind in progress; that thereafter the officers searched her premises.

Police Officer George T. Sims, Jr. testified that he was assigned as Narcotics Officer to the 7th District; that he had no warrant to search the defendant or her premises; same being her private living quarters.

He further testified as follows:

From that apartment after I arrested Beatrice Lynumn, from the apartment itself I took $8.00, eight $1.00 bills and a glassine bag containing a loose green substance.

From the person of the defendant I took a $10.00 bill and two five's and nothing that I can recall.

After I placed her under arrest I took one ten and two fives from her person. Officer Bryson took something from her after I had arrested her. I was the first Officer to ap- [fol. 23] proach her. Bryson was in my immediate presence but wasn't right before me, he was some distance away.

I arrested this defendant January 17, 1959 at approximately 5:00 or shortly thereafter. In the first floor apartment, 6518 So. University. I was there when Zeno knocked on the door or called thru the door. Beatrice Lynum came out of the inner door which was closed at that time and came out into the hallway and as she stepped out into the hallway I grabbed her by the hand and told her I was a police officer and she was under arrest. She asked me for what, and I told her she had been set up.

The first thing I did was to grab her by the hand as she stepped out into the hall. If I recall correctly she came out into the hall just about half way between the door of her apartment and to the front door.

When the door opened, I couldn't see it open but when I heard the footsteps of the defendant coming down the hallway, I stepped into the door and moved down the hall and grabbed her by the hand and told her she was under arrest. She did not make an attempt to go back into her apartment before I placed her under arrest because I had a hold of her.

[fol. 24] . I have already said I had no warrant for her or for the premises, nor for the hallway. No warrant at all. All I took from her was the $20.00 and that was after I had arrested her.

Police Officer James Bryson testified that on January 17, 1959 he was on Narcotics Enforcement and participated in the arrest of Beatrice Lynumn and searched her premises.

From the search I didn't take anything. We didn't find anything from the search. I think it was some money in her hand and a package of loose green substance which she handed to me. This is what we took. She handed it to me after she was under arrest. I was there when she was placed under arrest.

He, also, identified the physical lay out of the premises; the entrance into the hallway; and the arrest of the defendant. He then further testified as follows:

I can't say which one of us pushed the door open after she cracked it, because she opened the door widely and attempted to come out, either came out or stood in the door, one of the two. I don't know exactly whether it was me or Sims that placed her under arrest at that time. It has been a long time and I haven't gone over it too closely. But she [fol. 25] was placed under arrest in my presence if I didn't do it. If I remember correctly, as she was placed under arrest we stated to her that she was under arrest for the sale of narcotics. We had no warrant at all.

On behalf of the State, Officer Sims testified on the Motion to Suppress.

He said that prior to the arrest of the defendant he, Officer Kobar and Bryson, and James Zeno had a conversation in the 7th District. Over objection, he further said that Zeno agreed to cooperate by phoning the defendant Lynumn to make a purchase under their supervision. Zeno called Lynumn, after obtaining $28.00 from the officers. They all went to the Lynumn home; Zeno went up first; Bryson and Sims followed; and Zeno was gone about 10 minutes. Returning, he handed a green substance to Sims. Sims looked at the green substance, told Zeno to call back to Mrs. Lynumn and say that he, Zeno, had left his eye glasses in

the apartment. Zeno did this; the door of the apartment opened, and Sims rushed up to the defendant, grabbed her by the hand and arrested her. He had not examined the bills at the time of the arrest and did not know at the time of arrest whether the bills were the same ones previously given to Zeno or not.

[fol. 26] He further testified that when Zeno called Mrs. Lynumn, Zeno said in effect that he owed Mrs. Lynumn some money and was going to pay her, and wanted a can; that at the time Zeno did this, Zeno was under arrest for sale and possession; and Zeno was told by Sims that Sims would see what he could do with the State's Attorney to help Zeno. After promising Zeno that Sims would help all he could with the States Attorney, Zeno made the call. The promise came first. Zeno, at the time of the arrest, was with Bryson inside the hallway. The defendant was under arrest when the officer took her back into the apartment. Zeno had already pleaded guilty to his indictment in the same courtroom. Prior to going to the defendant's apartment, Zeno was searched; the search consisted of only looking in his pockets. Previous to this search, Zeno had been searched a long time earlier at the moment of his, Zeno's, arrest. Zeno was not searched by anyone else. He had been with other prisoners, 6 or 7 in the patrol wagon.

James Zeno testified for the State as follows:

He identified himself; stated that he had pleaded guilty in Judge O'Connell's court; had not been sentenced; had [fol. 27] been asked the day before by the State's Attorney to testify; that he expected consideration for so testifying.

He stated that he had known the defendant, Lynumn, about 9 months; and over objection said that he had previously purchased marijuana from her. He was arrested January 17 at his apartment by Sims and Bryson. Over objection he said he talked to Mrs. Lynumn on the phone; that he wanted to come over and buy something and bring her the money he owed her. He testified that she told him to come over and he went and gave her the money. He saw the landlord in the living-room. Lynumn handed him a package, said nothing, and he left. He entered the hallway, saw Sims, and Sims told him to call back and say that he had left his glasses. Zeno called back, Lynumn opened the

door and came out; Sims grabbed her by the arm and arrested her.

He said he actually did owe her some money. Sims took the package and opened it, which occupied only a few seconds, and the witness made the call about forgotten glasses. When Lynumn opened the door she had nothing in her hands. Witness had no conversation with Sims prior to the arrest except that Sims said call about forgotten glasses. While Mrs. Lynumn was opening the door and coming out of the hall, nothing was said between Zeno Sims.

[fol. 28] Zeno was Sims' prisoner and had been before Sims talked about getting help with the State's Attorney. Zeno said he wanted all the help he could get, that he had pleaded guilty and wanted the shortest possible term; and that he would naturally do all he could to help himself go home. He had not seen Mrs. Lynumn for about a month and a half or two months previously.

Witness Harrington was recalled for defendant and testified that Zeno was in the apartment 15 to 20 minutes and spent some time in the living room where Harrington was. (This was on rebuttal).

Officer James Bryson was recalled on behalf of the defendant and said on rebuttal that Zeno disappeared down the hallway and gone about five minutes. He further said that it could have been less than five minutes; that if Officer Sims said it was between ten and fifteen minutes, he—Bryson—did not know if Sims was mistaken or he was mistaken; that it was possible that Bryson was mistaken.

Argument on Motion to Suppress.

The Court: The motion to suppress the evidence is sustained.

Whereupon the cause was adjourned to Thursday, June 18, 1959.

Defendant enters plea of not guilty; waives trial by jury.

[fol. 29] The trial commences. All witnesses were properly sworn. (Hereafter no mention will be made of this fact).

JAMES ZENO, called as a witness on behalf of the State was examined and testified as follows:

Direct examination.

By Mr. Conley:

My name is James Zeno.

Mr. Holman: I have an objection to make after the witness has given his name, and my objection is that any evidence coming from this witness is improper after the motion to surpress. The Albea case squarely substantiates it. The entry by stealth vitiates the proceedings. In the Albea case, they said that whatever the informer was going to testify to is likewise inadmissible because what the informer found out as a result of this illegal arrest of this person Albea is not admissible in evidence.

The Court: Your motion will be denied. Proceed, please.

Witness Resuming: I live at 6529 South Kenwood.

About January 17, 1959, I had a conversation with police officers from Woodlawn Station at about 4:45 P.M. I called Beatrice Lynumn's home.

I know Beatrice Lynumn prior to January 17th. I talked to her approximately 5 to 6 times on the telephone. I knew [fol. 30] her voice. It was approximately 5:00 o'clock when I talked to her from the Woodlawn District.

Q. What did you say to her and what did she say to you?

Mr. Holman: Same objection, lack of a proper foundation.

The Court: Objection overruled.

I said I was coming over and would like to purchase a can and she told me to come over but not to come in because there was someone there. I said I had part of the money I owed. I would pay her part of the money I owed her. She said come on over. Then I went over with Officers Bryson and Sims and went upstairs. I rang the bell and went upstairs and she let me in and told me to come on in, that it was all right. I said hello, how had she been doing? I had $28.00.

Mr. Holman: I object to that. The money is suppressed, if the Court please, and you have no right to offer that suppressed evidence. That has been suppressed and is not admissible.

The Court: Overruled.

Witness: I gave her $28.00. I owed her $10.00 and gave her $18.00 in addition. She told me to sit in the kitchen and I sat in the kitchen for a few minutes and she brought back this package.

[fol. 31] It was in newspaper and I took it. She didn't say anything. She just handed it to me. I stood up and I said, I think I had better be leaving because you have company. I passed the door and the fellow was sitting in the living-room and I nodded. She said something. I don't remember what.

Mr. Holman: I move to strike out "She brought me a package." I renew my objection and move to strike it out because it is suppressed. It is evidence that is suppressed.

The Court: The motion will be denied.

Witness: Then I left the apartment and went outside to the corridor and she followed me out there. When she came back to her apartment, Officer Sims came up to me and took the package and opened it and looked in it.

There is one door, outside door that leads from the stairwell; then there is a hallway about 7 to 8 yards long before you enter into her apartment. When I left she went out with me to the outside door. She opened the door. The door was still open when she went back. I stayed inside this hallway. Officer Sims took the package and opened it up.

I stood there and called and told her I left my glasses there.

[fol. 32] She came out of the inner door. She came all the way out back to me and then Officer Sims grabbed her by the arm and told her she was under arrest and we went back into the apartment. There was no conversation between me and the defendant when she came out in response to my call; no conversation. This happened in Chicago, Illinois.

Mr. Holman: Motion to strike his testimony on the grounds that it is within the prohibition as laid down in the Albea case.

The Court: Motion denied.

Cross examination.

By Mr. Holman:

I did not say that Miss Lynumn stepped out of her door and walked towards me and Officer Sims grabbed her by the arm, that is wrong. She had gotten up to me before Officer Sims grabbed her by the arm. That is approximately—

She walked about 14 feet out into the hallway and then Officer Sims grabbed her by the arm. He said you are under arrest.

He said you are under arrest after she had reached me, then he said that. I don't remember whether he grabbed her by the arm first or said you're under arrest first. I don't remember even if they happened at the same time. He arrested her by placing his arm at or about the position of [fol. 33] her elbow. I wasn't noticing or paying any attention and cannot say whether it was with force or not.

Whichever one came first, it was still a matter of short seconds between the grabbing of the arm and the statement you are under arrest; it was at about the same time. And both happened out there in the hall after she had come on out. I went with Sims and Miss Lynumn back into the apartment after Sims had grabbed her arm and placed her under arrest in the hallway. Over the telephone I did tell her that I was going to pay her some money, and I did owe her some money. I don't remember how long I was in the hallway. It was about 4 or 5 minutes, something like that. It wasn't over ten minutes.

I was not out of the sight of the Officers more than 10 minutes. I did see Mr. Harrington in the apartment but I don't remember if I spoke to him. I don't remember if I was introduced to him. I am a table waiter. I am now waiting to be sentenced to the penitentiary.

Besides waiting to be sentenced to the penitentiary, I don't remember when I did other waiting. I wasn't on any legitimate job in January of 1959. The last time I drew a [fol. 34] pay check from any employer wasn't as a waiter. I don't remember the exact date because it has been so long now.

I was locked up in December. I was in jail in December. I was in jail from December '56 to December, 1957. I was in jail this period of time for possession of narcotics.

I served 2 years in the Bridewell from '56 to '58, '56 and '57, and got out in '57. I didn't go to work. When I had the conversation at the Woodlawn police station I had been out of the Bridewell about 13 months. In that 13 month period, I did not work for anybody. I was on the welfare.

I was on relief, welfare. I got $30.00 a month and lived on $30.00 a month. When I wasn't on relief I was with friends. The friend I stayed with was a Mr. Dade.

He lived at 5201 Woodlawn. I lived with Mr. Dade 7 months. He feed me and let me have room and board there. I did no work for him at all. He is a Cook. I was already in custody on January 17th when I went to the Lynumn apartment. I had been in custody 4 or 5 hours for possession and sale of narcotics. I had possessed and sold narcotics to somebody when they arrested me. It was not a bum rap or else I wouldn't be here.

[fol. 35] Before I went to the Lynumn apartment I was arrested for possession and sale and that was before I had talked to Miss Lynumn. I had possessed some narcotics from some one else. I was in my house when the police arrested me. They found no narcotics on me when they arrested me. There was someone there at my house who was sent to buy from me and I sold the narcotics to that somebody. When I sold the narcotics to that person the police came in and arrested me.

And charged me with possession and sale of narcotics. Sims and Bryson were the arresting officers. They told me that if I would set somebody up for them, they would go light on me. It was three or four or five hours from the time I was arrested and carried to the Woodlawn station before I made telephonic contact with Miss Lynumn. The police officers told me that if I would set somebody up for them, they would go light on me and I was hoping that they would go light on me.

I knew I would have to be classed as a second offender and would have to serve time in the penitentiary. I knew I was penitentiary bound. I wanted to keep from going to the penitentiary if I possibly could. I still want to keep

from going to the penitentiary if I possibly can. I wouldn't have to lie to keep from going to the penitentiary. I won't [fol. 36] tell any kind of lie to keep from going because I don't have to lie. I wouldn't lie to help myself.

I have conscientious scruples against telling a lie.

Q. You have no conscientious scruples against peddling narcotics, though, have you?

Objection. Sustained.

I did peddle narcotics though and it didn't trouble my conscious. I am the same James Zeno that is under indictment in cause number 59-211 pending in this same Court. I am that same Zeno and I pleaded guilty on March 11, 1959. I told the Judge that I was guilty of peddling narcotics. I told him I was guilty of selling narcotics. I want to help myself. I am trying to help myself when I entered that plea.

After the arrest of Mrs. Lynumn at her apartment, I went back to the police station in one of the officer's cars. Miss Lynumn was in the car with me. I believe we were in the back seat; I don't remember. I don't remember if we went in a patrol wagon.

I don't remember if I went in the patrol wagon. My recollection isn't hazy about this incident but I still don't remember how I went to the police station when I left the [fol. 37] Lynumn apartment. I don't remember if I had a conversation with Miss Lynumn on the way to the station. I think we did have a few words. I talked to her and she talked to me.

I don't recall her asking me why I would tell a lie on her in saying that I sold her narcotics. And I don't remember saying to her that I had to set up somebody and I didn't care who I set up. We didn't have that conversation. And she didn't say, well, this is a damn dirty trick to pull on me. She told me she didn't blame me. I don't remember now her saying that she didn't blame me, but I do remember her saying she didn't blame, don't worry about it, or something like that. I don't remember now.

I remember we were talking about the fellow she had set up. She was saying she hated to have to do that. She didn't say much because I was in a mood and I wasn't talking

that much but she said she hated to do that. I can't remember anything else that was said.

I don't remember telling her or making a statement to her in the very beginning when she said, "Why did you tell this lie on me when you say I sold you narcotics" and when I said I had to set somebody up, I did not tell her that my sister had gotten me out on bail, and that my sister had gotten me out on bail twice before nor that whatever [fol. 38] you are going to say I didn't say it. I was answering your question. I did not say my sister had gotten me out on bail and I knew she wasn't going to get me out on bail any more and that I was trying to do the best I could for myself and I didn't care how I would do it. My sister had not gotten me out at any time.

I had not seen Miss Lynumn for approximately 4 weeks prior to January 17th. About a month, something like that. When I was arrested I was living at 6529 South Kenwood, January 17th. A man had been sent in to make a purchase from me and I hadn't seen Miss Lynumn for 4 weeks prior to that.

Redirect.

By Mr. Conley:

When I saw Miss Lynumn prior to January 17th I saw her in her house. I owed her this money about 3 or 4 weeks.

The Court: I have one or two if you don't mind.

Would you describe the package, please? You said that you gave her $28.00 and got a package I think you said wrapped in a newspaper. Describe it further, please, other than the fact that it was wrapped in a newspaper. How large a package was it?

The Witness: It was approximately about four inches by four inches and about an inch and a half thick.

[fol. 39] The Court: You referred to it in the telephone conversation that you said you had with the defendant as a can?

The Witness: Yes, your Honor.

The Court: Is that how you refer to the package as a can?

The Witness: As a can, yes, your Honor.

The Court: Very well. Now, I am a little confused as to those dates that you were in jail. Am I to understand now that you were released from jail in December of 1958 or 1957?

The Witness: December of 1957.

The Court: Then you were out for thirteen months until you were arrested on this charge—.

The Witness: That's right, your Honor.

The Court: —on January 17?

Is this Mr. Dade you referred to related to you?

The Witness: No, just a friend.

The Court: You say he is a cook?

The Witness: Yes, your Honor.

The Court: Who does he work for?

The Witness: He works for one of the Harding restaurants. I don't remember which one.

[fol. 40] The Court: Very well. You lived with him at 5201 Woodlawn?

The Witness: Yes, your Honor.

The Court: Now you said that the officers told you that if you set somebody up for them, they would go easy on you?

The Witness: No, your Honor. They had said they would put in a recommendation for leniency.

The Court: Who said that?

The Witness: Officer Sims.

The Court: Officer Sims?

The Witness: Yes, your Honor.

The Court: That is all I have in mind. Thank you. You can call your next witness if there are no further questions of this witness.

GEORGE T. SIMS, JR. called as a witness for the State was examined and testified as follows:

My name is George T. Sims, Jr., Police Officer, City of Chicago, and so employed January 17, 1959.

About 4:45 PM that day I conversed with Zeno at the Woodlawn station. Zeno, Bryson, and Kobar were present. After the conversation we got in an automobile, the four of us and drove to 6518 University. And I gave Zeno $28.00.

[fol. 41] Objection by Mr. Holman; overruled by Court.

By agreement, one standing objection in the record as to the money was deemed sufficient.

Witness: I searched Zeno at the time of his arrest and after he was taken to the Woodlawn Station.

At approximately 3:00 PM or 3:30 PM I made a detailed search of his person. The first search took place at his home. He was stripped to the nude and everything was taken from him. He was given his clothing to put back on. He had nothing left in his possession. After I took him to the police station, we had a further conversation: I turned back over to him books that he asked for with telephone numbers in it; then I took the book from him again and turned over to him ten cents and he made a call.

He had nothing on him in the station when he was searched other than the clothes he was wearing. We drove from the station to 6518 South University and we parked on the east side of the street. I turned over to Zeno $28.00 in United States currency. Zeno, myself and Bryson got out of the car with Kobar. Kobar went to the rear of the building. Bryson and I entered the vestibule with Zeno. He rang the third floor apartment bell.

[fol. 42] The door was buzzed and Zeno went into the inner door which leads into the hallway leading upstairs. I went into the door with Zeno and Bryson. After we got inside, Zeno trotted up the stairs; I tip-toed up until I got to the second floor. When I arrived at the second floor, Zeno had arrived at the third floor. He stood there a moment and the third floor door opened. As the door opened, I tip-toed and peered over to the third floor and saw Lynumn having a conversation with Zeno. The two of them disappeared into the doorway and the door was closed. I am

indicating the defendant in this cause, Beatrice Lynumn as the woman that had admitted Zeno into the apartment. After the door was closed, I waved to Bryson and the two of us walked upstairs and stood next to the door that we had seen close with Zeno and Lynumn entering.

As we stood at the door, I put my ear to the door, but heard nothing. About five minutes later I heard a door on the inside of the apartment open and footsteps on the inside and shortly after that Zeno emerged from the door that he had previously gone into. He had in his hand the newspaper wrapped package which he turned over to me. It was a small package, about four or six inches long and three or four inches square and it had a little depth to it [fol. 43] about an inch and a half. I opened the package; I noticed crushed green plant on the inside; I poured some of it into my hand and after examining it I talked to Zeno.

Objection by Mr. Holman that "examining" is a conclusion, but "No objection to 'pouring it into his hand' as that is contrary to what he testified to on the motion to suppress." No Ruling by court.

Witness: I looked at the plant and I felt the plant and I had a conversation with Zeno after which Zeno called Beatrice and said he had left his glasses.

Objection by Mr. Holman; overruled by court.

Witness: He called Beatrice and said he had left his glasses in the apartment; she opened the door and as she came out into the hall, I was standing in the common hall, in the vestibule part with the door partly closed. As she walked down the hallway toward Zeno, I opened the door and stepped into the hallway. I told her she was under arrest and I grabbed her by her hands, both hands. At this point, I told her that she had been set up, that she had just made a sale and I showed her the package. She said, "I have company on the inside. I don't want"—

[fol. 44] I told her she had been set up by Zeno; I showed her the package, she said I have company in the house; I don't want to let him know what's happening. She said, when we go in, don't go in the living-room. We can go in the bedroom and finish the conversation. We walked in the door and went into the apartment and the first door we came to was the bedroom; so she and I went into the

bedroom and Bryson went in there with us. I think we let Kobar in first and after he came into the apartment, she and Officer Bryson and I went into the bedroom.

I told her then that Zeno had been trapped and we asked him to cooperate; that he had made a phone call to her and subsequently had purchased the evidence from her. I told her then if she wished to cooperate, we would be willing to recommend to the State leniency in her case. At that time, she said, "Yes, I did sell it to him." And she said "I'm in bad shape. I don't have enough money hardly to pay my rent." She said "I would be willing to cooperate" and she did. She made a telephone call.

Mr. Hofman: Now, may I be heard on that portion of it, Judge?

The Court: Surely.

Objection by Mr. Hofman and motion to strike, as being induced by promises of immunity.

(Col. 45) The Court: I will reserve ruling on your motion to strike it until the close of the State's case. Proceed, please.

Witness: We remained in the apartment and she made a telephone call. About a half an hour after the phone call, a man came into the apartment with a large package containing marijuana and we placed—

Objection by Mr. Hofman; overruled by Court.

When she called on the phone I was present and Officer Bryson was present. Officer Bryson had his ear to the phone. She said, I believe she said, she wanted a half a piece, a half a pound of marijuana and asked how long he would be and she talked to him about his new automobile. After that conversation, the phone was hung up. Officer Bryson heard the conversation of both parties. I left the apartment and went to the front apartment where I looked out of the window and about 20 minutes after the first phone call she had supplied me with the information—

Mr. Hofman: I object to all of this, if the Court please.

The Court: Don't you think you have gone far enough on this now?

Mr. Conley: Yes, Judge. Perhaps not far enough, but maybe we should go into some other testimony.

[fol. 46] Q. What happened twenty minutes later?

A. Weaver came in and delivered a large package of marijuana to

Objection by Mr. Holman. Overruled by the Court.

Witness: Weaver delivered a large package of green substance. We placed him under arrest on the spot. When he attempted to flee the premises, he ran into me.

Objection by Mr. Holman. Overruled by the Court.

He was apprehended and after he was apprehended, he in company with Miss Lynumn were further questioned

By Mr. Conley:

Q. What if anything did he or Miss Lynumn or you say at that time?

Mr. Holman: Same objection. His name isn't even listed as being present at any oral or verbal confession or admission of this defendant.

The Court: Overruled.

She said, Weaver, I set you up. Sorry, but the police had me and they asked me to set up my source. I called you. He said, well, I don't hold it against you, Beatrice. And she said I don't hold it against Zeno. They were all talking together in the apartment at that time.

Mr. Holman: I object to that part and move to strike it out.

[fol. 47] The Court: Sustained.

Witness: Weaver, Zeno and Lynumn were all in the same apartment at that time and the landlord, Mr. Harrington. Officer Bryson, myself and Kobar were all in the apartment. The wagon men came. All this happened in Chicago, Cook County, Illinois.

Q. I show you a large brown envelope which is about 12 inches by 8 inches with the name Beatrice Lynumn on it and on the back is D. Draged, 1-18-59, Number 332341, and ask you if you know what this is?

A. No, I don't. All I know, it is an envelope with the names on it. All I did was brought it to Court today. I picked it up from the police custodian.

Mr. Conley: I will open this package which I will ask to have marked People's Group Exhibit 1. (So marked.) I will remove therefrom these two empty open envelopes which I will ask to be marked People's Group Exhibit 1-A and ask you what they are?

A. They are both evidence envelopes made out the night of the arrest at Woodlawn. These are envelopes that were made out at the time the evidence was obtained at the police station and the evidence that was taken in this case was placed inside these envelopes and sealed.

[fol. 48] People's Group Exhibit 1-B I have seen before. It is the paper Zeno gave me in the hall at 6518 University, January 17th approximately 5:00 o'clock. I opened the package and I looked inside and saw crushed green substance and I looked at the substance, poured a little into my hand and later took the package and sealed it back up.

I opened it up about 5:00 P.M. After I opened it up, after looking at the green substance, I closed it back up immediately. After I closed it back up, I placed it in my pocket. The next time I showed this to Beatrice Lynumn First I showed it to her about 5:00 o'clock or shortly thereafter in the hallway at 6518 South University. In the presence of Beatrice Lynumn, myself, Bryson and Zeno, I told her Zeno set her up and he said he bought this package from her. This is the package I refer to. After I got into the station, Officer Kobar wrote this envelope up in my presence and placed it inside in the envelope. By envelope, I mean People's Group Exhibit 1-A. He sealed it and wrote the name across the flap.

I turned it over to Officer Kobar. I saw Officer Kobar seal the package. After he sealed the package, he left my [fol. 49] presence with the package. I don't know who he gave it to of my own personal knowledge. I picked it up today and brought it to Court.

Mr. Conley: Judge, we have a chemist here from the Crime Laboratory. His evidence would be very brief. I thought we might ask him—

Mr. Holman: No, I want to go on with the continuity if you don't mind doing that. If the custody is not properly traced, then, of course, the Court would never get to it.

The Court: We are trying to accommodate Lieutenant Dragel. Would you stipulate as to what he would testify to as to the contents if he were here?

Mr. Holman: Let me see your report.

The Court: Very well. Show him the report and let him talk to the Lieutenant and you might be able to stipulate so that he won't have to come back.

(Thereupon the following proceedings were had outside the presence of the Presiding Judge.)

Mr. Holman: In the presence of Lieutenant Dragel, State's Attorney Conley and myself, Holman, I will stipulate, to save Lieutenant Dragel's time that, if he were called as a witness, he would say that on January 19, 1959, Officer [fol. 50] Kella who Lieutenant Dragel knows personally—

Lieutenant Dragel: I do.

Mr. Holman: —of the 7th Police District handed to Lieutenant Dragel an envelope.

Lieutenant Dragel: He didn't hand it to me personally at that particular time, Mr. Holman.

Mr. Holman: To whom did he hand it?

Lieutenant Dragel: To my duty man who is there sitting at the desk to receive exhibits. This came early in the morning. I wasn't up there at the time.

Mr. Holman: Who was it handed to?

A. To my duty man, Feeley.

Mr. Holman: You didn't know that, did you, of your own knowledge?

Lieutenant Dragel: No.

Mr. Holman: You didn't see him?

Lieutenant Dragel: No, I didn't see him but I know Kella.

Mr. Holman: Let's start all over again.

I will stipulate that Lieutenant Dragel would testify that on January 19, 1959, he saw Exhibit Q-1 containing 16.72 grams.

Lieutenant Dragel: G-m-s, grams.

[fol. 51] Mr. Holman: He was handed Exhibit Q-1 containing 16.72 grams and that Lieutenant Dragel made a chemical examination of it.

Lieutenant Dragel: Chemical and microscopic examination.

Mr. Holman: Chemical and microscopic examination of it, and that he found as a result of his chemical and microscopic examination that Exhibit Q-1 was cannabis, cannabis sativa, s-a-t-i-v-a, commonly referred to as marijuana, from which the resin had not been extracted.

Now, that is as far as I will stipulate. If it was left there in the morning, he doesn't know who left it there and he doesn't know of his own knowledge what happened to it after that.

Mr. Conley: That is fine.

Mr. Holman: But to save him from having to testify what he physically did, that he made a microscopic and chemical test, that is as far as I can go.

Mr. Conley: One minute, Lieutenant, could you identify this exhibit for the record? First of all, this is People's Group Exhibit 1 for identification.

Mr. Holman: Pardon. No, no. All I am going to agree to, to save him from saying, is that he would testify to the chemical test. If he is going to show a link in the chain of continuity, you will have to come back.

[fol. 52] Mr. Conley: We are not asking that you stipulate that the Lieutenant has to put anything in, in the link that he can't do personally. I submit that this envelope was sealed by Lieutenant Dragel personally, signed by him and sealed by him over his signature. Is that correct, Lieutenant?

Lieutenant Dragel: Yes.

Mr. Holman: It was handed to you on January 19 and you sealed it on January 18.

Lieutenant Dragel: That is not necessary in the case Mr. Holman.

Mr. Holman: I won't stipulate then, Mr. State's Attorney. He can't say it was handed in on the 19th and he sealed it on the 18th.

Lieutenant Dragel: I don't see why you should.

Mr. Holman: That ends that.

Lieutenant Dragel: You have this portion here, this portion here (indicating).

Mr. Holman: He says in his report that it was handed to him on the 19th, and here you say he sealed it on the 18th. He sealed it a day before he got it.

Mr. Conley: Well, the laboratory report is dated the 19th which, of course, is the date—

[fol. 53] Mr. Holman: I would stipulate that he would say that on January 19, Officer Kolla submitted this exhibit to the laboratory, not on the 18th, but on the 19th.

Lieutenant Dragel: There seems to be some confusion here.

Mr. Holman: A whole lot of confusion.

Lieutenant Dragel: As to time.

Mr. Holman: Let's submit it all to the Court, this kind of confusion.

Lieutenant Dragel: It was brought in approximately at midnight. There is a little something wrong here.

Mr. Holman: I can't stipulate, counsel. I can't.

(Thereupon said cause was recessed until 1:45 o'clock P.M. of the same day, Thursday, June 18, 1959.)

Cross examination of Officer Sims:

By Mr. Holman:

This is the envelope that I identified for the State's Attorney. This isn't marked for evidence but it is part of Group Exhibit 1.

Mr. Conley: At this time, we will ask for the record that this empty brown paper envelopes be marked People's Group Exhibit 1-A for identification. (So marked.) And that this newspaper wrapped package measuring approximately five by three inches and about one-half inch thick [fol. 54] be marked People's Group Exhibit 1-B.

(So marked for identification.)

Witness (resuming): People's Group Exhibit No. 1-A is the envelope that was opened by the State's Attorney in Court today and it is now marked People's Group Exhibit 1-A.

Mr. Conley: It is People's Group Exhibit 1 for identification.

Mr. Holman: He has a 1-A on it.

The Witness: This one was opened. I made a mistake. This was opened by him. This was inside the envelope.

Mr. Holman: Let's start all over again. People's Group Exhibit 1 for identification is the exhibit that was opened by the State's Attorney in open Court.

Witness: That is right. And right about there on it, it has the name D. Dragel and underneath that the figure 1-18-59. And that was the envelope that was handed to me and you helped me to hold, and from this Group Exhibit 1 for identification came two documents. Exhibit 1-A for identification and Exhibit 1-B for identification are the exhibits. I know who D. Dragel is. At that time he was Chief Chemist in the Crime Lab. Now he is the Director.

1-18-59 would be the day after the arrest. The arrest having been made at about 5:00 o'clock, 1-17-59. George [fol. 55] Kobar's writing is on 1-A on the reverse side. All the writing on the reverse side of 1-A is in Kobar's handwriting. The words "newspaper package" and "containing green plant" are in Kobar's handwriting. Likewise the signature "G-e-o. K-o-b-a-r". I didn't see him seal the envelope but I was present when he made out the rest of the writing on the front side and on the back.

On the main side is also his writing except for the notations placed on there by Dan Dragel.

Q. Do you know which one is Dragel's?

A. When this envelope was opened and signed Dragel and 1-18-59, 1:00 P.M.

Q. In the afternoon?

A. In the afternoon.

Witness: I did not have anything to do with this except to give it to Kobar when he put evidence in it. He filled it out. It was blank when I gave it to him.

Q. Now, we come to the package, 1-B. How do you know that that is the same package that you had out there that evening?

A. Well; at the time I obtained this package, I believe I

put my initials and I don't see them on the outside of that package but I put my initials on the package and the date on the newspaper.

[fol. 56] I already said I took Miss Lynumn in the apartment by her two hands.

I had complete physical possession of her two hands. I had turned her hands loose when we went into the apartment. I went in ahead of her. The door was still open. The apartment door was still ajar and I walked into the apartment and she followed me in. We were together but I was beside her. I believe Bryson and Zeno were behind her. She was between two police officers. We proceeded in that fashion to enter her apartment. We hadn't been in there long before we told her she had been set up and that if she would cooperate we would go light on her. It must have been about 10 minutes.

The rest of the time during that 10 minutes I think I had opened the back door for Kobar and had questioned the gentleman that was in the apartment. Then I came back in the bedroom where she was talking to Bryson. I exhibited no gun at any time, nor pulled one. Officer Kobar talked to the defendant while I was in the apartment. I don't believe Kobar talked to her after the call was made and we were waiting; he talked to her then. I don't know what Kobar said to her. While I was talking to her in the [fol. 57] bedroom, she told me that she had children and she had taken the children over to her mother-in-law, to keep her children.

Q. Did you or anybody in your presence indicate or suggest or say to her that her children would be taken away from her if she didn't do what you asked her to do?

Witness: I believe there was some mention of her children being taken away from her if she was arrested.

The Court: By whom? Who made mention of it?

The Witness: I believe Officer Bryson made that statement and I think I made the statement at some time during the course of our discussion that her children could be taken from her. We did not say if she cooperate they wouldn't be taken. I don't know whether Kobar said that to her or not. I don't recall if Kobar said that to her or not.

I don't remember all of the conversation Kobar had with her. I am confused whether I let Kobar in or not. I don't recall which one of us let him in but he was in the apartment very shortly after we went in. I am not really confused. I just don't recall whether he made the comment to her. There was some mention—I don't know whether I let him in or whether Bryson let him in but he did come in the apartment. I don't remember that. I believe I am [fol. 58] correct in saying that Bryson and I were the only ones prior to her calling Weaver that talked to her because we were in the bedroom with her and Kobar wasn't in there with her.

Bryson talked to her about her children and I did too. We didn't tell her in that manner that if she didn't cooperate she would lose her children. We did mention—I think the way it came up, we noticed the clothing in the bedroom. She had been cleaning up around the house.

I asked her who the clothing belonged to. She said they were her children's. I asked how many she had and she said 2. I asked her where they were or who took care of them. She said the children were over at the mother's or mother-in-law's. I asked her how did she take care of herself and she said she was on ADC. I told her that if we took her into the station and charged her with the offense that the ADC would probably be cut off and also that she would probably lose custody of her children. That was not before I said if she cooperated, it would go light on her. It was during the same conversation. It was all during the same conversation because I never left the room until Bryson was talking to her and then she made the call and then I left the room.

I believe it was all before she made the telephone call [fol. 59] The first statement she made to me after I told her that Zeno had set her up, she said I know what's happening; but I don't want my friend to know that I am involved in narcotics. So, when you go into the apartment, don't mention anything about dope in his presence. That isn't all that was said but that was the first statement and that was after I had arrested her and then I took her back into the apartment.

I took her to a different from where the occupan' was. She asked me what would this cooperation mean to her, and what would happen to her if she cooperated. I told her I wasn't in a position to tell her definitely what could happen but I would make a recommendation to the State's Attorney that if she cooperated, she should be entitled to leniency. And after that, she cooperated. I don't think she told me anything about her participation in the Zeno affair. She and Zeno had a conversation in my presence.

I don't know if she talked to Bryson after that. I remember when I placed her under arrest, I told her she had been set up and she said she understood.

She stated that she knew what had happened because Zeno was present. She told me she would wish that I wouldn't mention anything in the presence of this person in the apartment.

[fol. 60] I don't recall the next date I saw her after the 17th. I don't think I saw her the next day at all. Nor talked with her. I don't know whether Bryson or Kobar did but I don't think I did. They did not talk to her in my presence.

She did not make any oral confessions in my presence on the 18th. I didn't see her on the 18th. As a matter of fact, I didn't see her at all on the 18th that I recall. She didn't make any statement in my presence on the 18th that I remember.

Objection by Mr. Holman that no proper notice was furnished about alleged oral confessions.

The Court: Is there any question about that, Mr. Conley?

Mr. Conley: No, Judge, we will stipulate that the list of witnesses we had given to Mr. Holman or counsel at that time is listed as the 18th of January.

Mr. Holman: And that no statement was ever furnished to this defendant at arraignment or any other time that she would be called upon to meet any alleged confessions made on the 17th.

The Court: I think that is what counsel means.

Mr. Conley: We will agree.

The Court: Yes.

Mr. Conley: The statement says as to the 18th.

[fol. 61] Witness: I didn't give the package that I got from Zeno to a messenger. I gave it to Officer Kolar. I don't know what he did with it. It was in the envelope when I gave it to him. He put it in his pocket and that is the last time I saw it. The last time I saw it, it was in his pocket in his possession.

I had no conversation with the defendant on the 18th. At one time in my presence Mr. Zeno did not have on any shoes. That is when we first broke into his apartment; he was partly clothed, not fully dressed. We were in his apartment long enough to make a search, a half hour, forty five minutes. Then he was taken to the station. He must have been in the station in custody about an hour and a half or two hours prior to calling Miss Lynumn.

With respect to the time I took him into the station and the time I took him over to Lynumn's, I searched him just before he made the call. He was in a little room with me and Bryson and Kolar. We went over to Lynumn's apartment in my automobile. The only time he was out of my sight was five or six or seven minutes that he was inside the apartment on the third floor at 6518 University. In that five or seven minutes, I don't know actually who he was talking to of my own knowledge. When I got into the apart-[fol. 62] ment, there were two people in the apartment. Or rather there was only one in the apartment; we went in with the other. That made two people in the apartment.

There was 6 of us when Kolar, myself, Bryson, and Lynumn were there. There was one other person in the apartment when I went in. Kolar was at the back door. I don't know anything about the door that goes down into the basement from the 3rd. floor. I didn't know that day there was such a door and still don't know it. I don't know of my own knowledge whether Zeno used that door or anything about the door.

Redirect examination.

By Mr. Conley:

When I first placed her under arrest I told her she had been set up by Zeno. Zeno was right there. I told her that this package that I had in my hand, he had given to

us, that he had gotten from her and I asked her questions—In the hallway I asked her if she had any more narcotics in the apartment.

Objection by Mr. Holman; overruled.

Witness: She said yes, but she didn't want me to mention narcotics or anything about it in the presence of the man. She didn't want him to know what was happening. I told her I wouldn't say anything if she didn't and she and I walked into the apartment together.

[fol. 63] Objection by Mr. Holman to witness explaining discrepancies; overruled by court.

Colloquy between Court and Counsel.

A. At the conclusion of the testimony before the Grand Jury, in the preparation room of the Grand Jury, I was asked to submit a list of witnesses who were present during any oral admissions or written confessions. At that time Officer Bryson was present in the preparation room. He had not testified in the Grand Jury. I was a little fatigued and I asked him if he would help me in making out the very numerous reports that we had to make out and he said he would. So Officer Bryson without consulting me made that list up. I didn't check it. The 18th is an erroneous date. None of those things took place on the 18th. It was on the 17th.

Mr. Holman: I move to strike it out, if the Court please. In the middle of the trial is not the place to correct it, if the Court please?

The Court: Well, I don't think it is an attempt to correct it. It is an attempt to explain how it happened. Now, you can still avail yourself of whatever the law is in that regard. Go ahead, please. I don't think the explanation helps us, if any. It is the 18th. Now, the witness has testified that all of these conversations took place on the 17th. So go ahead, please.

Witness: I gave this package to Kobar in the apartment [fol. 64] of the defendant. In the apartment, he put it in the envelope that he had in his possession—that I had in my possession and he stuck it in his pocket at the time. And that is the last time I saw it until today.

Recross.

By Mr. Holman:

I don't know how many conversations I had with Miss Lynumn in which I told her that she had been set up and where she said she had knowledge of it and that nothing should be said to her landlord; there were several such conversations. She constantly said not to mention anything to the landlord. At the time of her arrest, we only spoke to her about her own case. I made the statement to her more than once; but I don't know how many times, that she had been set up and if she cooperated we would go light with her.

I made that statement in the bedroom. I don't remember on direct examination telling you that I took her right straight into the bedroom and there had this conversation; that I made no mention of it out in the hallway.

Q. Now, on direct examination, do you remember telling us that you took her right straight into the bedroom and had this conversation; that you made no mention of it out in the hallway?

A. No, I don't.

[fo. 65] Mr. Holman: May I have the record read?

The Court: I don't think it is necessary for you to take the time of the Court to do it. You may do it if you wish for your own information. The witness says he doesn't recall saying that, and if the record indicates that he did, well, the record speaks for itself.

Mr. Holman: The record does so indicate and I wanted to ask him how he reconciled the difference. I want this question for impeachment.

Objection by Mr. Conley.

Mr. Holman: Here is what I would like to have done. I would like to have the record read to him what the Court Reporter has just read to me when your Honor stepped back into your chambers, if I understood the Court Reporter correctly. I will apologize if I didn't. He (Mr. Sims) said he went back in the bedroom and told her all of those things that Mr. Sims now says he told her out

in the hall, and I want an explanation of that inconsistent and contradictory statement.

May I have the record read for that purpose?

The Court: Well, if the Court Reporter can find it, I have no objection to him reading it to the witness.

[fol. 66] Mr. Holman: Can you find the place?

(The record was read by the Reporter.)

Mr. Holman: You said that on direct examination, didn't you, Officer?

A. Yes.

Q. This never took place in the bedroom? It didn't take place in the hall?

A. I had a conversation in the hall and we finished the conversation in the bedroom.

Q. On direct examination—

A. On direct examination I said the same thing.

Q. On direct examination the State's Attorney asked you for the conversation in the hallway and you told him that part of the conversation—

A. Yes.

Q. —which the Court Reporter just read?

A. That's right.

Q. And in which you did not say anything about her admitting about the set up and that she sold the stuff to Zeno; why didn't you tell us that on direct examination?

Mr. Conley: I object.

[fol. 67] The Court: Sustained.

Mr. Holman: That's all. (Witness excused.)

Motion to strike testimony—no copy of confession furnished; no notice of oral confession; evidence inadmissible as given under promises of leniency.

The motion to strike was denied.

Daniel T. Dragel, called as a witness for the State, Testified as follows:

My name is Daniel T. Dragel, address 6950 Imlay.

For 12 years Chief Chemist, Chicago Police Scientific Crime Laboratory. Am presently director of the labora-

tory. Stipulation that Lt. Bagwell is a qualified Chemist. I have made 25 or 30 thousand tests. I have seen Group Exhibit I before. Group Exhibit I A bears my identifying marks and I have seen it before. I saw it on January 18, 1959 at 3:00 PM. I have seen Group Exhibit I A before. I saw this on January 18, 1959, at the laboratory around 1:00 o'clock in the afternoon. I removed the items in Exhibit which I subjected to a microscopic and chemical test. That exhibit contained in the sealed package is cannabis sativa, also known as cannabis and commonly referred to as marijuana, and I utilized the results and procedures known to me. I have formed that opinion as a result of those tests.

Q. How do you know it is the same package?

A. At the time that I tested this particular exhibit I sealed the exhibit with scotch tape, and placed thereon a laboratory number 59[illegible], my initials, Dis and weight tape, 1672 grams and a QI which is in my handwriting.

This exhibit I removed from a locked drawer in the laboratory, the 18th of January was on a Sunday. I worked that Sunday the day watch, 8:30 until 12:30. People's Group Exhibit I B, I examined and marked it for identification. I placed the exhibit and my original envelope in an envelope prepared by me and I placed thereon a name and in this particular case Beatrice Lemmin and inventory number 59[illegible] and on the back I placed my name, date and also Sund for Sunday. I placed this sealed exhibit back in a locked steel cabinet pending pickup by the responsible officers. The test indicated 1672 grams.

Cross-examination.

By Mr. Holman:

I did not testify before the Grand Jury. I made a notation of the quantity of narcotics contained in this package on Sunday, January 18, 1959. I took it out of a locked drawer. That is, I took the package out of a lock drawer. Yes, I talked with you and I, during the noon recess. I am an attorney and member of the bar.

You dictated a stipulation to the State's Attorney and to the Court Reporter. You were reading from a report. And the dictation was partially from a report and partially your own words. I do not have that report on me. Defendant's Exhibit 1 is the document you had before you when you started to dictate the stipulation.

My name is Daniel Dragel and I signed that report. You called my attention to the fact that the report which I signed and certified to, starts out that on January 19, 1959, Officer Kella of the 7th Police District submitted the following exhibits to the laboratory for examination. You did call my attention to that.

Q. You remember me calling your attention to 1-18-59, telling you you couldn't have been submitted that and the day before you that there was a discrepancy, that you couldn't possibly have made your report a day before it was delivered to you; do you remember me saying that to you?

Objection by Mr. Conley. Sustained by the Court.

Witness: The exhibit I hold in my hand shows it was delivered on the 18th. That does not necessarily indicate the date that it came to me. 1-18-59 is the time that I [fol. 76] sealed it and when I ran my test on it and that was definitely and emphatically prior to 1-19-59; 1-18-59 is the date prior to 1-19-59.

That document was handed to you for the purpose of stipulating and saving time, you said, to save time; that there was something wrong when this report that it certified to, shows that it was delivered to me on the 19th, when the exhibit shows it was delivered on the 18th; you certainly did make that observation.

In reference to this particular exhibit, I have checked the ledger, which is a book of original entry; I have worked on that exhibit on Sunday, January 18. It is entirely possible that my duty man who is a dog watch employee made a mistake and made the original receipt the 19th. We may have a typographical error here of one day. That is entirely possible that is the case. It is a typographical error. It is not necessarily a typographical error to say that Kella submitted that, when I got it out a lock cabinet.

Officer Kella did not submit that on the 19th because I had it on the 18th. There is a discrepancy of a day there. Somebody had made an error, a typographical error, called it the 19th instead of the 18th. As far as I know from the record, Kella brought it in. When I say in my report that Kella brought it in, that is hearsay from the record. I don't know of any mistake in the analysis. I handled this [fol. 71] exhibit with the utmost care keeping in mind I would rather find a test for narcotics in the negative than in the positive.

Q. I am only asking you about errors. But I just happened to find those two. As you look in there, do you find any others that this shows, or didn't you have an opportunity to check through it.

A. If I did, I would be the first to mention it to you, Counselor Holman.

Redirect examination.

By Mr. Conley:

I have the original ledger book with me in which the entry was made.

Colloquy between Court and Counsel.

The report indicates the time in the morning of January 19th that it was made. This particular report doesn't indicate the time, but other records do indicate the time at 12:30 A.M. The records indicate the 19th. I indicate on Group Exhibit 1 that I received it on the 18th and made the test on the 18th.

Recross examination.

By Mr. Holman:

Q. You made the test at 1:00 o'clock in the afternoon of the 18th, 1:00 P.M.?

A. I did, sir.

[fol. 72] Q. What does that show 12:30 A.M.?

A. 12:30 A.M. on the 19th. The original receipt from which I took my information was in error.

Q. What time did you go to work?

A. At 8:00 o'clock in the morning normally.

Q. You weren't there at 12:30 A.M., were you?

A. No, sir. Maybe—I am sorry, I at no time stated I was there at 12:30 A.M. and I hope not, Mr. Holman, that I am ever there at 12:30 A.M. From the records, the exhibits came in to the laboratory at 12:30 A.M. Sunday morning, the 19th—Sunday morning is the 18th when they actually came in—Monday morning is the 19th. I don't know if the 19th was involved here.

I have always known that the quantity was 16.72 grams. Something in excess of a half ounce. I knew that from the 18th, on from the time I tested the exhibits.

Redirect.

By Mr. Conley:

I know of my own knowledge that Exhibit 1-B is the quantity I tested.

George Kobar, a witness called on behalf of the People testified as follows:

My name is George Kobar, Police Officer of Chicago, [fol. 73] so employed on January 17th and participated in the arrest of the defendant Beatrice Lynumn. I have seen Group Exhibit 1-B previously.

I first saw it in the 3rd. floor apartment at 6518 University. I received it from Detective Sims; I put it in an envelope and took it to the station and filled it out and gave it to Officer Cella to deliver to the Crime Laboratory.

Cross examination.

By Mr. Holman:

It was about 5:00 P.M. January 17th when I first saw this. I got to the station around 6:00 o'clock. Officer Cella was not there at the time. I believe he works midnight and that I gave it to him shortly after midnight. That day I worked from 8:00 in the morning until approximately 2:00

the next morning. I was assigned to days. I left the Lynnman apartment about 6:00 P.M. and I didn't see Cella until some time after midnight; then I gave it to him, he took it in his hand.

He had it in his hand and left the room. He walked away from me and I haven't seen it since. I know Miss Lynnman, but I had no conversation with her at the time of the arrest. I might have asked her if she was working and things of that nature. I didn't see any children but she told me she had some. I made no statement to her about the [fol. 74] prosecution would go fight with her if she would cooperate. I did not hear Officer Sims make any such conversation. I did not hear Officer Bryson; and to my knowledge no such conversation as that took place in the whole apartment during the whole arrest.

Redirect examination.

By Mr. Conley:

I have seen Group Exhibit 1-A before. This is the envelope that I put the package into and sealed. By the package I refer to People's Group Exhibit 1-B, the newspaper wrapped package. My name appears on the back. I put it there January 17th between 6:30 and 7:00 o'clock at night after I had put the package in there.

Recross examination.

By Mr. Holman:

The writing is in my handwriting; "newspaper" is in my writing. The word "Dragel" is not in my handwriting.

Leonard J. Kella, called as a witness, testified as follows:

My name is Leonard J. Kella, Police Officer, 7th District. People's Group Exhibit 1-A I have seen. I saw it on January 18th approximately 12:15 A.M. I received it from Detective Kobar. I took it to the Crime Laboratory at

11th and State and gave it to Sergeant Feeley. That is the last I saw of the package. I got the package from Kobar and gave it to Feeley.

[fol. 75] Cross examination.

By Mr. Holman:

I took it to the Lab. right after midnight; approximately 12:30—12:15 to 12:30. That would be early in the morning of January 18th right after midnight of the 17th. I drove my own automobile down there. Officer Feeley is on one of the top floors 11th or 12th, I could be mistaken. I asked the elevator operator to take me to the Crime Lab. That is not the first time I had been there. Any time I go into the elevator I say Crime Lab. and he takes me right up.

It is either the 11th or the 12th floor. Feeley was by himself when I handed it to him. He took the evidence from me and gave a receipt. I left after I got the receipt. I handed it to him personally. He layed it right in front of both of us when he made out the receipt. This is where it was when I left. It was in a brown envelope. I think I brought two articles of evidence. Two pieces of evidence. It was in another case. But this is the one article for this case.

William Feeley, called on behalf of the People, testified as follows:

[fol. 76] Direct examination.

By Mr. Conley:

I am Sergeant William Feeley, Police Sergeant in the Crime Laboratory and was so employed on January 18, 1959. That day my shift was from 12:00 in the morning until 8:00 in the morning; I saw Officer Kelia in the early morning hours of Sunday the 18th. He came into the laboratory about 12:30. Group Exhibit 1-A in a manila envelope about 12 inches by 8 inches looks like the envelope. He brought two envelopes in there. It looks like it; it could be. I didn't initial it.

I have read what is on the envelope. I gave Officer Kella a receipt for two sealed brown manila envelopes and I opened the sealed closet and placed them therein and locked the cabinet; the evidence cabinet; the same cabinet that I put evidence in that I received from police officers. Dragel gets it out from there in the morning.

Examination.

By the Court:

Witness: Your Honor this looks like the envelope that Officer Kella brought to me. When I receive an envelope from a police officer I make no identifying marks on the envelope. It was sealed at the time I got it. It was sealed [fol. 77] when it was handed to me. I do not prepare any envelope into which I put evidence that is brought in to me.

The Court: How do you identify this as being the envelope that Officer Kella brought in to you?

Witness: That I can't.

The Court: Very well.

Mr. Conley: Judge, I am not satisfied with the strict chain of evidence in this case myself and I won't be until I have enough to put in to satisfy Mr. Holman that it is the evidence that we are talking about.

Colloquy between Court and Counsel. Mr. Conley says the receipt given for Exhibit 1-A is lost; he had it before lunch. Further colloquy.

George T. Sims, Jr. recalled:

I am the same George Sims that testified earlier and I am still under oath. I know what the markings on People's Group Exhibit 1-B means.

Colloquy between Court and Counsel.

Witness: When I received it from Zeno I showed it to Beatrice and then placed my initials and the date on here and placed it inside an evidence envelope which I handed to George Kobar in the apartment. Kobar took the evidence to the station in a sealed condition. I didn't

[fol. 78] see it again until today when I opened the sealed envelope in Court.

In the apartment, prior to putting it in the envelope I placed the date 1-17-59 and my initials G.S. on the newspaper. George Kobar put his initials G.K., and Bryson put J.B. on the newspaper. We wrapped it up and put into the envelope and gave it to Kobar. He filled out the information, then sealed the envelope, and put it in Group Exhibit 1-A. The first time I saw those initials is just now when I opened up the package in Court.

Cross examination.

By Mr. Holman:

When I gave this to Kobar, I had to fold it up to keep the substance from falling out and afterwards there was already some tape on it at the time, and we fixed the tape. We carry too. We sealed it like this so it wouldn't fall out, with our tape, and put it inside Group Exhibit 1-A. The notations were written by George Kobar, the name, the time and everything else and he put this exhibit as well as another exhibit in the envelope.

Witness: When it left my hands it went to Kobar. I don't know whether Kobar opened it or not. When it left Kobar, I think it went to Cella. I don't know whether Cella [fol. 79] opened it or not. When it left Cella, it went according to my file to Sergeant Feeley. Feeley doesn't remember whether it's the same package or not and I didn't see Feeley get the package and don't know what Feeley did with the package.

Feeley said he left it in a locker. I know nothing about who opens the locker except what Dragel said. I don't know who unseals it except what I was told by Lieutenant Dragel. I put no initials on the green substance.

Q. You don't know whether the green substance is the same substance you took from the Lynumn apartment?

A. I don't know it.

It is in a container that has my initials on it, but I don't know whether that is the same green substance or not. I couldn't know that.

OFFER IN EVIDENCE

Whereupon People's Group Exhibit 1 including People's Group Exhibit 1-A and 1-B was offered in evidence. An objection was made by the defendant.

The Court: If you want more time, Mr. Conley, I will give you until tomorrow morning.

(Thereupon the cause was continued until Monday June 22, 1959.)

[fol. 80] Proceedings of Monday, June 22, 1959

The Court: You may proceed, Mr. Conley.

Mr. Conley: Last Friday, Judge, there was some question as to the chain of evidence in this case. I think it might be better, and the Court might be able to evaluate it better if we start out and put in the whole chain of evidence.

Mr. Holman: I object to them going over the whole case again.

Mr. Conley: We would be very brief as to the testimony.

Mr. Holman: I object to it as repetitious.

The Court: Well, under the circumstances I don't see any objection to it. Objection overruled.

Mr. Holman: Might I make this observation, We can do it merely by refreshing the Court's recollection. It was taken by Zeno, given to Kolar. Kolar took and gave it to Kolla. Kolla gave it to Feeley. Feeley put it in a drawer.

The Court: I don't know what the State has in mind, but I am going to permit him to proceed.

Mr. Holman: And there was an order excluding witnesses.

Mr. Conley: I will call Officer Sims first.

[fol. 81] GEORGE T. SIMS was recalled as a witness for the People, and testified as follows:

I was sworn on Friday.

I am still under oath and I am the same Officer Sims that testified previously that I received a package from Zeno. It was a small package about 3 inches by 2 inches, about

one inch thick wrapped in newspaper. Inside the newspaper it contained a crushed green plant. I know what People's Group Exhibit 2-B is.

I have seen it before. The first time was January 17, 1959 at approximately 5:00 o'clock P.M., 6518 So. University, in the hallway on the third floor. I got it from Zeno. At the time it was given to me I retained possession and subsequently placed my initials on the paper. My initials are on Exhibit 1-B. My partners James Bryson and George Kobar and 1-17-59 are on there. I was present when they were written.

I saw them write that. I retained possession until about 7:00 P.M. and then turned the envelope which contained Exhibit 1-B, over to Officer Kobar and left his presence. He went to the station. People's Group Exhibit 1 was last seen by me in Court Friday. On Friday I picked it up from the police custodian at 1121 South State Street and brought it to Court.

[fol. 82] Cross examination.

By Mr. Holman:

The time of day or night when I first saw Exhibit 2-B, which now is 1-B, was approximately 5:00 o'clock P.M. The initials were put on it about the same time or shortly after, 5:15, 5:30; in the Lynnman apartment. About an hour and a half or two hours later I gave it to Kobar. Group Exhibit 1, I picked up from the police custodian. I don't recall who gave it to me. I signed for it. It was a plain clothes police officer. I don't know whether he was a civilian employee or not. Some man whom I don't know even his name gave it to me.

Redirect examination.

By Mr. Conley:

Q. People's Exhibit 1-B, is it substantially in the same condition now as when you first got it from Zeno?

Mr. Holman: I object, Your Honor please, specifically to

Objection overruled.

Witness: Substantially the same except for notations on the outside. Several notations from Court and chemist. Our initials were not on it when it was received from Zeno.

Recross.

By Mr. Holman:

Q. What do you mean, substantially it is in the same condition?

[fol. 83] A. Well, I have torn the paper myself, it is different. And the notation on the outside, the word "sale," and notations from the Court Reporter, People's Exhibit 1-B. Daniel Draizel initials, and numbers that were placed on the outside. They were not on there the last time I saw it prior to Friday.

Witness resumes: I took it upon in Court Friday to find my initials.

Q. Was it Thursday?
A. I believe it was Friday.
Q. I believe it was Thursday. When did you take it upon?
A. Last time I was in Court, Friday.
Q. You were in Court on this case?
A. Yes.

Mr. Holman: Officer Sims, don't you know we adjourned Thursday so we could go to a funeral Friday. You are wrong about that. You still think you opened it Friday after that refreshing of your recollection? You still opened it Friday?

A. The last time we were here.

George Kobar, recalled testified as follows:

I am the same Officer Kobar still under oath. The first time I saw Group Exhibit 1-B was January 17, 1958 at 6:15 [fol. 84] P.M. Until 6:30 P.M. It was given to me by Officer Sims. About 6:30 P.M. I put it in an envelope, brought it into the station, inventoried it, sealed it, made notations on the outside of the envelope; inventory number

bers, place of arrest, where found, and the date. I wrote on Exhibit 1-C.

I wrote on the exhibit at about 6:30 or a quarter to seven on the night of January 17, 1959. All the writing on that exhibit is in my handwriting. After I completed it, this particular inventory was put into a mail drawer, and the original, which is a white copy was attached to the exhibit. I have seen Group Exhibit 1-A before at the 7th District station, January 17, 1959 about 6:30 or a quarter to seven. Group Exhibit 1-B is the newspaper wrapped package. Group Exhibit 1-C was in the envelope, Group Exhibit 2-B. I sealed the envelope, placed notations on the back, wrote my name across the flap and sealed that, and resealed that over with cellophane paper. There was a white original copy of the inventory sheet attached to the outside.

Mr. Conboy: The exhibit is 1-D.

Witness: After putting People's Group Exhibit 1-D into the envelope which has been designated as Group Exhibit [fol. 85] 1-A, and after marking it as I testified to, I gave it to patrolman Kella about midnight January 17th.

Cross-examination.

By Mr. Holman:

I got 1-D from Mr. Sims. About 6:00 P.M. at 6518 University. The original white sheet that 1-C is a copy or duplicate to, should be in the custodian's office downtown. All the writing on here is not in my handwriting. I have not seen the original since January 17. 1-C, a blue report, is a duplicate of the original which I issued. The white original should be in the custodian's office. I have not seen it since then.

Bryson and Mrs. Lynumn were in the room when Mr. Sims handed that to me. Zeno could have been on the premises. Zeno was on the premises. He was not in our immediate presence when Sims handed it to me. I put the marking on 1-D at the scene. G.K. and 1-17-59 is my handwriting. When I wrote that on there, I had it opened up.

LEONARD J. KELLA was recalled as a witness.

I am the same Officer Kella who testified previously. On January 17, 1959 in the late evening hours I received two packages from Officer Kobar. It was approximately 12:15 [fol. 86] which would be on January 18. I received two packages from Kobar in the 7th District Woodlawn Station. Group Exhibit 1-A is one of the packages. I took them immediately to the crime laboratory at 11th and State. I have seen People's Exhibit 2 before. I received this from Sergeant Feeley. Exhibit 2 was received approximately 12:30 on January 18, 1959. I received it from Sergeant Feely and that is the last I saw of People's Exhibit 1-A until I saw it in Court. I gave the two packages to Sergeant Feely and received a receipt therefor.

Cross examination.

By Mr. Holman:

I received the two envelopes from Kobar at the district police station approximately 12:00, 12:15. I took it immediately in my car down to the crime lab and gave it to Mr. Feely. I remember that on Thursday when I was here I said I gave him a package in another separate case; that is what I said; that apparently is now false. I haven't given any other false testimony in this case. This appearing to be a carbon copy, I really don't know where the original would be; probably the crime laboratory has it, I don't know.

[fol. 87] WILLIAM FEELY recalled by the State testified as follows:

I am Sergeant William Feely, sworn last time, still under oath, still police sergeant, crime laboratory.

I have seen People's Exhibit 2 before first time January 18, 1959, 12:30 A.M. My handwriting, No. 092384, I put on myself.

This particular one was given to Officer Kella who brought it in. This is a copy; the original is attached to the inventory and the evidence; the original is attached.

to the envelope. The original in the inventory, the white slip, is attached to the evidence and placed in a locked cabinet. Two receipts are given. There are triplicate, the original and two copies. One copy is given to the officer from whence the case originated; the other is kept in the district I believe. The original goes with the evidence. This copy is the one I gave to the police officer.

Q. Now I will show you People's Group Exhibit 1-A and ask if you have ever seen that before?

Objection by Mr. Holman: overruled by the Court.

Witness: I have seen this before. I can tell by the inventory number 622384. After I got it from Officer Kolla and gave him a receipt for it I placed it in the locked [fol. 88] cabinet, the steel cabinet, where all our exhibits are put.

Cross examination.

By Mr. Holman:

There are three copies of Exhibit 2. This one is in my handwriting. I made it out. It is true and correct except for the mistake in the date. The date is a mistake. It was the 18th and I have the 15th. The report couldn't be true and correct.

Colloquy between Court and Counsel.

Witness: The report is not true and correct. It is dated wrong.

Q. Is either one of the three signed at the bottom when they are taken back out?

A. Yes they are.

Q. Which ones are signed?

A. That I couldn't tell you. That is procedure up there in the Narcotics Department.

Witness: That is when the originals are made out. I stopped writing at the inventory number. One of the copies is attached to the evidence envelope. That would be Exhibit 1-A.

The original was attached to 1-A by a paper clip or staple. Those are the stapled marks on the left corner, then it was put in the book. I have never seen it [illegible] until now

Redirect examination.

By Mr. Conley:

[fol. 89] I should know where the original is of that receipt, but I couldn't tell you positively.

Q. Doesn't it become a part of the ledger in the crime lab?

A. Yes.

Objections by Mr. Holman; overruled by the Court.

Where it said "Officer's signature", that refers to the officer retrieving this evidence and not the officer that received it into the crime lab. An officer cannot pick it up without signing at the bottom.

Daniel T. Dwyer, recalled as a witness, testified as follows:

I am the same Lieutenant Dwyer who testified previously. On January 18, 1959 I saw Group Exhibit 1 A at the laboratory on Sunday. I took the package which contained some exhibits, an exhibit, from a locked steel cabinet. It is a cabinet to the right of our entrance door at the laboratory, set off in a separate room, and it has three steel drawers and a lock on it; a lock on one of them. For the particular type exhibit we have just the one cabinet.

On the 18th I took Group Exhibit 1 A out of that cabinet, took it back to the Chemistry Department and processed the contents of the exhibit. Group Exhibit 1 D has my identifying mark on it. I put them there January 18th. In Group Exhibit 1 D, I removed the from a representative [fol. 90] sample and submitted the sample removed to microscopic and chemical examination, with the result that the exhibit is cannabis sativa, sometimes called cannabis, sometimes referred to as marijuana, and from which the resin had not been extracted.

Group Exhibit 1, the large envelope, is an envelope I made up to include the other exhibits on Sunday, January 18. I know by my handwriting. I placed the same Beatrice Lyman, inventory number 602384, laboratory No. 132,

and on the back, after sealing, I placed my name, date 1-18-59, and also Sunday. I then placed this back in the steel cabinet awaiting pick up by responsible or interested officers.

Officer George T. Simms recalled. I am the same Officer Simms who testified before.

Q. Without going into People's Group Exhibit 1-D and 1-A, could you tell us if you have seen this envelope before which is marked People's Group Exhibit 1?

Objections by Mr. Holman that it is repetitious; that the officer has been on the stand four times in the case; on the case in chief; a second time Thursday; then again he testi- [fol. 91] fied some more about the exhibit; then a third time today, and now called for a fourth time on the same subject matter.

Objections overruled by the Court.

Witness: I saw this exhibit the first time when I picked it up from the chemist at the crime laboratory 1121 So. State; this is a brown envelope marked Group Exhibit 1, and on the front, Beatrice Lynumn, 692384. I picked it up April 2, 1959. I brought it to Court; after leaving Court I took it to the police custodian and turned it over to the police custodian.

Last Thursday or Friday, 18th or 19th, I picked it up again; it was the last time I was in the courtroom during this trial; last Thursday, I believe it was.

I picked it up from the police custodian. It has not been in my custody ever since then. At the conclusion of Thursday's hearing I turned it over to the clerk of this court.

Cross examination.

By Mr. Holman:

I took this to the custodian of police on April 2, 1959. I do not know the name of the man in the custodian's office that I gave it to. I picked it up to bring it to Court but it was not used and I took it back. I was wrong about the date I picked it up again, it was Thursday, not Friday.

[fol. 92] I can't think of anything else right now that is wrong that I testified to in this case. Since the last time in Court it has been with the clerk of the Court. I did pick it up from the custodian of police Thursday morning.

I don't know the name of the man that gave it to me. He was behind a desk. He went into the safe behind the desk in the custodian's office, 7th floor, 1121 So. State Street. I was not with him when he got it from the safe. He just brings it to the desk and we sign for it. He was out of my sight. He went back into some room, out of my sight, and came back with it. I gave him a receipt for it. I don't have a copy; I just sign and bring the exhibit. I did not see where he got the exhibit from. I don't know where it came from. The room is about 20 by 20 feet. The man was out of my vision. There are tables in the room and the tables were in my vision. Other men were working in the room and were in there beside the table and the safe; also there are shelves and packages; not lying around but on the shelves. The shelves were secured. I didn't see him when he physically took the package from where he got it and handed it to me.

Stipulated that the age of the defendant is 25 years.

Argument on the admissibility of the State's exhibit.

[fol. 93] Each State exhibit received in evidence over objection.

Whereupon the people rested.

Arvern Harrington, called as a witness for the defendant, testified as follows:

My name is Arvern G. Harrington. I live at 908 E. 88th Street. I am an Electrical Contractor. I managed 6518 University and was such in January 1959. Beatrice Lynum was one of my tenants occupying the third floor rear. She had been a tenant about two years. I was the manager of the building when she applied for an apartment. I checked her references. I have known her altogether about four years. I know her general reputation for honesty and for being a peaceable and law abiding

citizen in the community in which she lives prior to the return of this indictment. That reputation is good.

On January 17, 1959 I was in her apartment when Officer Sims came in. I was there when a man named Zeno came in. I heard the conversation between Zeno and Miss Lynumm. As Zeno was about to leave he said "I had better be getting back home"; and he told her "I better pay you that money that I owe you"; then he left the apartment and she went on out with him.

Cross examination.

By Mr. Conley:

She has lived in the building about 2 years. I know her [fol. 94] for that length of time. I see her two or three times a week. She pays $90.00 per month and pays promptly. I know James Zeno. I met him once in her apartment.

Beatrice Lynumm, defendant, called as a witness in her own behalf was examined and testified as follows:

Direct examination.

By Mr. Holman:

My name is Beatrice Lynumm. I live at 5325 South Michigan. In January 1959 I lived at 6518 University. It is a six flat building facing east and I have the third floor rear apartment. There are 3 floors on each side of the building. Two apartments to each floor. On the top floor on the 18 side I had the rear apartment. On January 17th Zeno called me. He owed me money, $23.00. I had loaned him this money about three months previously. He said he was being evicted and had money en route from his sister and if I could lend him the money, he could pay his rent; and I haven't seen him since. That was three months previously. On this day he told me on the phone he was sorry he had not been around to pay the money but he had been in pretty bad shape. But now he had come into some money and would come and pay me.

weren't; and he would recommend leniency and I had better do what they told me if I wanted to see my kids again. The two children are three and four years old. Their father is dead; they live with me. I love my children very much. I have never been arrested for anything in my whole life before. I did not know how much power a policeman had in a recommendation to the State's Attorney or to the [fol. 97] Court. I did not know that a Court and a State's Attorney are not bound by a police officer's recommendations. I did not know anything about it. All the officers talked to me about my children and the time I could get for not cooperating. All three officers did. After that conversation I believed that if I cooperated with them and answered the questions the way they wanted me to answer, I believed that I would not be prosecuted. They had said I had better say what they wanted me to, or I would lose the kids. I said I would say anything they wanted me to say. I asked what I was to say. I was told to say "You must admit you gave Zeno the package" so I said, "Yes, I gave it to him".

They asked me to make a telephone call. They said, after I had admitted I had given Zeno the package, that I would have to call my source of supply. I never would have made that admission except for the promise Sergeant Sims made to me. When they asked me to call up somebody, I called Mr. Weaver whom I knew socially. During this particular time there had been a big scandal about "Sin corner". Everybody was discussing sin corner and dope. I had heard Weaver's name. I knew Weaver but I didn't know the rest. When they were pressing me about the children, that I had better do what they said, I called him. I said [fol. 98] hello, how are you. The weather had been bad, how are you. Very well. General conversation. I did not ask him to bring anything. I didn't expect him to bring anything. I didn't know anything about him bringing anything. When I hung up the telephone from the conversation with Weaver, Bryson said "The son of a bitch isn't coming, you tipped him off". All I have said is how is the weather and so forth. General conversation. On that day I did not give to Zeno, nor did Mr. Zeno ask me in the telephone conversation in which he said he was going to pay me

the money he owed me, he did not say anything about having a can ready for him or anything like that.

He said here is the money I owe you. He owed me $23.00. When he gave me the money, he gave me $28.00. I asked him what the $5.00 was for and he said it was because I had it so long. I did not say to Mr. Zeno let's go into the kitchen. Nothing like that. I did not have any transaction with him in the kitchen nothing even like that. I did have a conversation with Zeno as Zeno and I went in the patrol wagon to the station. The first thing I asked him when I got in the patrol wagon was, "why did you tell a lie on me?" He said he had to set up somebody. I asked him why me. He said because he had been in trouble twice before.

[fol. 99] His sister had gotten him out of trouble both times. She told him she wasn't going to get him out of trouble again. When the officers wanted him, he knew he owed me money and that he could get into my apartment so he set me up. What he testified to in here is untrue. I did tell him that it was a dirty trick. I did not tell him I did not blame him neither in the apartment nor in the patrol wagon. I did not have any conversation with Officer Sims in the hall. We had no conversation whatsoever in the hallway and I did not tell him I knew I was being set up. I knew nothing like that.

Defendant's Exhibits 2 to 11, inclusive, marked for identification by the reporter.

Witness (resuming): Zeno in the conversation, said nothing about coming over to buy a can of anything. I did not tell him that I wanted him to sit in the kitchen because I had company; nothing like that. I did not hand him a package in newspaper, 1, 1-A, nor 1-B. I didn't hand him anything. The only reason I had for admitting it to the police was the hope of saving myself from going to jail and being taken away from my children. The statement I made to the police after they promised that they would intercede for me, the statements admitting the crime, were false.

[fol. 100] Exhibit 2 is a picture of you and myself standing at the hallway door, to the common hallway on the 3rd floor; the picture represents a door that blocks the view into the door as it opens around. In Exhibit 3, I am standing at the entrance to the stairway leading to the 3rd floor and

you are standing on the stairs. As I opened the door for Zeno, no one was in view on the stairway. The stair is wide and no one could miss a person if their eyes were open.

Defendant's Exhibit 4 represents me standing in the door leading to the common hallway on the 3rd floor. And you are standing across the hallway at the top of the stairs. The door opens back to the right, and I was standing somewhat back of the door when I let Zeno in. No one was in view and no one could see me. Exhibit 5 for identification is taken at the door. It is taken in the hallway door leading to the common hall of the 3rd floor. It shows my apartment door. The door on the extreme left is my apartment. That is my left hand and the door to my left represents my apartment door. Immediately to the side of it, is a door leading down the back stairs to the basement and outside. Anyone in the common hallway has a right to go down the common hallway and do any kind of trafficking they want. Exhibit 6 is the same picture. Exhibit 7 is taken from [fol. 104] the hall door with the hall door open showing the apartment across, directly in front of the hall door; the apartment in front of mine.

So that with a person waiting on the landing outside as shown in the first exhibit, and with this door closed, there is no way to see a person going into the front apartment; there is ample opportunity to go into the first apartment without appearing on the landing.

Exhibit 8 was taken with the hallway door open. It is a close-up of the apartment door, the door directly in front of the hall door, the apartment in front of mine. It is shown open, with the landing to my left, going down to the landing, and showing ample opportunity to enter the other door before going downstairs.

Exhibit 9 is a picture of the door leading to the back stairs; that led to the basement and outside. It is unlocked so any one can go down there.

Number 10 Exhibit is a picture taken from the front hallway from the door. It shows my apartment door open and the door on the right leading downstairs. It is adjacent to my door.

Exhibit 11 shows the landing leading to the stairs that lead to the third floor. The bannisters are on this side so that a person behind the bannister has to come downstairs in order to be seen and the bannisters are clear down.
[fol. 102] These pictures were made about 2 weeks prior to the motion to suppress and they accurately portray the scene as it existed January 17, 1959 and they are true and correct pictures of the portion of the premises involved.

Cross examination.

By Mr. Conley:

A photographer from the Chicago Defender took these pictures. I don't see him here today.

Zeno owed me $23.00 but paid me $28.00. I did not charge him anything. He gave it to me voluntarily. I was not employed at that particular time. I am a widow with 2 children. The last time I worked was about a month and a half before January 17th. I worked in a grocery store as part-time bookkeeper and made $40.00 per week.

Q. Did you lend any money to anybody else besides Zeno?

Objection by Mr. Holman; Overruled by the Court.

Witness: I don't remember loaning anybody else any money during that period of time. I have occasionally loaned money to people. I have two children. I had no conversation at all with Sims out in the hallway. He took me back into the apartment. When he reached the living room and Mr. Harrington attempted to rise, he said who he was.
[fol. 103] He did not tell me who he was when he took me by the arm. I did not ask him; he did not tell me then that I was set up; I didn't know he was a policeman at the time he took me by the arm. He had my arm and he was forcing me. There was nothing else I could do. I didn't scream or shout or say anything. It is not a fact that out in the hallway he told me I had been set up and it is not a fact that I told him I didn't want the man in my apartment to know what was going on.

I had no conversation with him in the hallway. I was told that I had better call somebody after I was arrested.

And there was a conversation about setting up my source of supply. I called Mr. Weaver whom I knew socially for almost a year. At that particular time, "sin corner" publicity was in all the papers and everybody was discussing it. I had heard Mr. Weaver's name. Of the dozen of names, his was the only one I knew. I knew his phone number and I knew him.

I had the number from memory but I don't remember it now. I did not tell the police officers that Weaver was my source of supply of marijuana. I was present when Weaver came into my apartment and was arrested. I heard no conversation.

[fol. 104] Q. Didn't Weaver tell you he had no hard feelings against you for setting him up because he would do the same thing under the circumstances?

Objection by Mr. Holman; Overruled by the Court.

Witness: No, I am sure he didn't, because he was sent immediately to jail.

I had no conversation at all with Weaver when he was there. I did not hear him say anything. I was in the bedroom; they took Weaver into the living room. I had no conversation with Zeno in the apartment. I did not tell Zeno that I forgave him for setting me up nor words to that effect. I had a conversation with Zeno in the patrol wagon. The two policemen who were driving were in front in the patrol wagon and Zeno and I were the only two in the back and we were handcuffed together.

We were in the back part of the patrol wagon; the two officers were in front. My statement to the police officers that I sold the marijuana to Zeno was false. I lied to the police at that time. I lied because the police told me they were going to send me to jail for 10 years and take my children, and I would never see them again; so I agreed to say whatever they wanted me to say. I did not say on direct examination that the police said they were going to [fol. 105] send me to jail for 2 years. I said 10 years because that is what they told me. I am positive I didn't say 2.

I saw Weaver in Court today. He is here now.

Q. Did you tell the police at any time you had made purchases of marijuana from Mr. Weaver?

Objection by Mr. Holman? Overruled by the Court.

Witness: Neither in the conversation in my apartment the day I was arrested, nor later in the station, did I say anything to the police about having purchased marijuana from Weaver previously; nor did I say he was my source of supply. I didn't set him up. I called him because the police told me to call somebody.

That was the only name I heard that was a name I knew. They said call somebody. Weaver's name was the only name I had heard that I knew. I was present when Weaver came to my apartment. I don't know when he was placed under arrest. I was present when he came in; I don't know. I never heard anybody say "you are under arrest". As I said, they sent me to jail immediately. They sent me to jail before I heard anybody say anything in my apartment to Weaver.

(Witness excused.)

[fol. 106] Mr. Holman: That is the defense, if the Court please. I have some motions.

Rebuttal evidence offered by the People was as follows:

James Bryson called by the People in rebuttal testified as follows:

I am police officer James Bryson, assigned to Woodlawn District and was so assigned January 17, 1959.

I participated in the arrest of Beatrice Lynumn late in the afternoon. I was in her apartment. We got there close to 5:00 o'clock, maybe a little earlier. I heard conversation between her and Sims before I went into the apartment. I didn't hear any conversation between her and Sims in the hall when she was arrested. The first conversation I knew of was inside the apartment.

In the apartment was Miss Lynumn; the owner of the building, Harrington, I think; Officer Kobar; and another man, James Zeno; and myself. There were conversations

in both rooms. The first conversation was in a sitting room where a television was.

At that time, Zeno and Mr. Harrington and Miss Lynumn, Officer Kobar, Detective Sims and I were present. I don't know verbatim what was said, but in essence some of the [fol. 107] things that were said, that Miss Lymgnn stated that she didn't hold any ill feelings toward Zeno because of what he had done to her because she was going to co-operate with the police officers, including myself, to arrest her sources, and that during that time, we went to the bedroom where there were Miss Lynumn, Officer Sims and myself, and she stated to us at that time she was buying her supply from a man named Weaver, and she gave me the telephone number and said "this is the number I called".

I said "how long after you called him does it take for him to come?" She said, "not too long, maybe 20 minutes, possibly a half a hour." She said, "hardly ever any longer than that." I said, "we want you to call this time just like you usually do." She said she would. I said I want to check this telephone number first.

I was present when Weaver came. There was conversation with Weaver in the presence of the defendant. At that time, the defendant told Weaver that Zeno had set her up.

Mr. Holman: I object to it. He ~~didn't~~ ask her the impeaching question and lay a foundation for the rebuttal.

Objection overruled by the Court.

Witness: She told Weaver that Zeno had set her up and [fol. 108] she didn't want to do what she did to him. But she was thinking about her children; and that she didn't want to go to jail and said that was the reason she called him. And he said, "well, I can't hold it against you because I am going to something myself. I cannot take this weight by myself. I will go along and do the same as you and Zeno have done".

Evidence objected to; and motion to strike as not rebuttal and no foundation laid for it. No ruling on objection.

Witness: She was there at the time.

The Court: Thank you. Anything else.

Cross examination.

By Mr. Holman:

Miss Lynumn said she was thinking about her children and she didn't want to go to jail. I was present and heard something pertaining to her being promised leniency if she would cooperate. I don't know exactly who said it. I could have, myself, or Sims.

It wasn't said in that manner. It was stated by one of the three police officers, I don't know exactly which one, that whatever aid she gave, a recommendation would be made to the State's Attorney as to her extent of cooperation and the State's Attorney would have full control over what leniency she would receive for her cooperation; whatever she did would be told and related to the State's Attorney's [fol. 109] Office and the effect of her cooperation.

I don't remember the words "going light". We said we had no control over the State's Attorney's Office, but in the past they had, when people had cooperated, they had taken that into consideration, and that it was the final decision of the State's Attorney as to what extent of leniency would be shown; not that she could expect leniency but the recommendation would be made to the State's Attorney as to her cooperation; that there would be a possibility of her receiving leniency, but we had no control over the final decision as to whether she could be given leniency or not. I don't know who told her that; usually that is the conversation of all the people we arrest.

I heard Sims talk to Miss Lynumn. I didn't hear him say that it would go light with her if she would cooperate. I heard him make the statement as I related, but if it was he that made the statement that whatever cooperation she gave—I am not sure who made that statement; I am sure of some of the statements. I made a statement that I wanted her to call up her source and that I would recommend also, myself, to the State's Attorney her extent of cooperation. That is all I can remember directly other than the conversation she had and Weaver had. I didn't [fol. 110] testify in chief. This is my first time testifying since the case started Thursday morning.

I talked with my partner Mr. Sims about the case since Thursday but not about the testimony. He did not tell me and I did not ask him what he had testified to. I didn't ask Mr. Sims why we continued the case Thursday afternoon. I was here when we were discussing why it was continued and I think I knew why. I did not discuss any testimony that he gave. I discussed the fact that I couldn't understand as to why there was so much conflict in the chain of handling the evidence but I stated that I thought it was very clear in that.

I did talk to him on certain things. I knew why it was continued.

Mr. Holman: That is all.

Mr. Conley: Did you talk to me today about what your testimony would be now?

A. No.

Whereupon Both Sides Rested.

Whereupon the Court found defendant guilty of unlawful sale and possession of narcotic drugs in manner and form as charged in indictment.

[fol. 111] Whereupon There Was Extended Argument and the Cause Was Continued Until Friday, July 3rd, 1959.

Court met Friday, July 3, 1959. Motion for new trial presented.

Motion for new trial entered and set for July 10th.

The Court: Anything you have to offer in support of your motion and particularly on number 22, 22nd paragraph, you may make it part of the record in support of your motion for new trial on the 10th.

Whereupon the cause was continued to Friday, July 10, 1959.

Court met pursuant to adjournment on Friday, July 10, 1959. Motion of defendant for leave to file an amendment to motion for new trial.

Motion for new trial denied.

Colloquy between Court and Counsel.

Leave granted by Court to file petition and to file exhibit.

The Court: Leave has already been granted to file the petition and exhibit. The only question is, do you care to answer them?

Mr. Conley: No, Judge.

The Court: Very well. They become part of the record.

Mittimus stayed until October 9th.

[fol. 112] Motion for new trial denied.

Judgment entered on finding by Court.

Sentence imposed by the Court of not less than ten nor more than eleven years.

Motion in arrest of judgment denied.

Leave granted to the defendant to file amendment to motion for new trial, supported by petition, in support for motion of new trial, accompanied by an exhibit marked defendant's Exhibit 1 of this date.

Affidavit of Court Reporter.

Certificate of Judge that foregoing Bill of Exceptions is true and correct transcript and stenographic report of proceedings at the trial.

Certificate of Clerk of Criminal Court that foregoing is true, perfect and complete transcript of the record in cause number 59-212, People vs. Lynumn, (except the Bill of Exceptions, the original of which by order of Court is incorporated).

[fol. 113] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 114]

IN THE SUPREME COURT OF ILLINOIS

Docket No. 35748—Agenda 19—September, 1960.

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

BEATRICE LYNUMN, Plaintiff in Error.

OPINION—December 1, 1960

Mr. Justice Solfisburg delivered the opinion of the court:

Defendant, Beatrice Lynumn, was tried by the court without a jury in the criminal court of Cook County on the charge of the unlawful sale, dispensing and possession of narcotics. She was found guilty of the charge and sentenced to 10 to 11 years in the penitentiary. From this judgment, defendant has sued out this writ of error.

Defendant contends that the indictment should have been quashed; a new trial should have been granted; and the evidence was insufficient to establish guilt.

We turn first to the contention that the indictment was insufficient. Defendant was indicted in three successive counts, with the unlawful sale, dispensing, and possession, "otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity (the exact quantity of which is unknown to said Grand Jurors) of a certain narcotic drug, to-wit: cannabis, sometimes called marijuana, contrary to the Statute." Defendant argues that not all forms of cannabis are narcotic drugs, and the indictment must more specifically describe the type of cannabis involved. In support of this view, defendant cites *People* v. *Sowrd*, 370 Ill. 140. The *Sowrd case* was decided under the particular language of a prior act. (Ill. Rev. Stat. 1935, chap. 91, par. 157.) which was later amended. (Ill. Rev. Stat. 1957, chap. 38, par. 192.28—2.17.) In *People* v. *Vargin*, 3 Ill.2d 25, we fully considered the *Sowrd case* and the subsequent statutory changes, and held that the language, "cannabis, sometimes called mari-

juana," sufficiently alleges a narcotic drug as defined by statute. We regard that case as conclusive here.

We next turn to the trial itself. The manner of the arrest of defendant and the nature of the proof are not unusual in narcotic cases. On January 17, 1959, one Zeno was arrested by police officers, Sims, Bryson, and Kobar, for the sale of and possession of narcotics. While in custody he agreed to "set somebody up" for the police. After phoning the defendant Lynumn, he went to her apartment with the three officers, and he was admitted. Zeno testified that he then gave defendant $28 and she gave him a package wrapped in newspaper. After 10 to 15 minutes Zeno left [fol. 115] and gave the package to the police who examined it, discovering a crushed green plant. He then called to defendant, and as she came out into the hallway officer Sims grabbed her and placed her under arrest. They then went into her apartment where they made a search and took the $28 from her. She then admitted that she sold the package to Zeno, after the police had promised to recommend leniency. At the suggestion of the police, she then made a call to one Weaver requesting a half pound of marijuana. In twenty minutes, Weaver appeared with a package containing a green substance and he was arrested. A green substance, allegedly in the package given to Zeno by defendant, was tested chemically and microscopically and it was cannabis sativa, also known as cannabis, commonly referred to as marijuana. It was admitted in evidence over defendant's objection. The police officers also testified to certain admissions of guilt made to them by defendant on January 17, 1959.

Defendant Lynumn testified that Zeno came to her apartment to pay her $23 that he owed her, and $5 extra for keeping the money so long. She denied selling or giving anything to Zeno. She testified that she said she sold the package to Zeno, and made the call to Weaver only after the police had arrested her, told her she would lose her children and her aid to dependent children, and promised leniency if she would cooperate.

At the beginning of the trial, the court sustained a motion to suppress the $28 in currency taken from defendant at the time of her arrest. Defendant now argues that

in light of that ruling neither Zeno nor officer Sims should have been permitted to testify. We see no merit in that contention. Independently of the search and seizure of the $28 both Zeno and Sims had knowledge of the fact that Zeno was given $28 by the police; when he left defendant's apartment he no longer had the money. Zeno, of course, had personal knowledge of whether or not he gave the money to defendant. After the motion to suppress, no evidence was admitted to show that the $28 was found in the possession of defendant after her arrest. The testimony of the witnesses was, therefore, of facts known to them independent of any possible illegal search and seizure of the $28. *People v. Albea*, 2 Ill.2d 317, relied on by defendant is inapplicable here. That case determined only that a witness discovered solely by an admittedly illegal search could not testify. In *Albea*, we reiterated what we said in *People* [fol. 116] v. *Martin*, 382 Ill. 192, 200: "The principle seems clear that evidence obtained independently of the illegal search may be used against the defendants." We think that rule applicable here. Both the identity of the witnesses and the facts to which they testified were independent of the search of the premises.

Defendant further objects that the marijuana introduced as an exhibit was not sufficiently identified as being the same substance which defendant allegedly gave Zeno. We have reviewed the entire record as to testimony tracing the green substance from Zeno to officer Sims, to the police chemist, through analysis, and back to the court room. We think the chain was fully proved, and that the marijuana was properly introduced in evidence.

A further complaint is made that the court erred in admitting testimony of alleged oral admissions of defendant without proper statutory notice to defendant. (Ill. Rev. Stat. 1959, chap. 38, par. 729.) The notice to defendant stated the alleged admissions were made on January 18, while the proof showed the statements to have been made on January 17. The record clearly shows that defendant was not surprised by the error in dates, but in fact admitted the statements with the explanation that she made them after a promise of leniency. In this state of the record, we cannot see that the error in date could be prejudicial.

A review of the record does indicate, however, that strong suggestions of leniency were made to defendant subsequent to her arrest and prior to her admissions. Even in the absence of defendant's statements, there is clear proof by Zeno and the police officers that defendant gave Zeno a package containing marijuana. Upon a review of the entire record, we are convinced that the evidence fully supports the judgment of the trial court. While the character of Zeno was questionable, he was fully corroborated by the police officers and physical facts. In the absence of a jury, the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom are for the trial judge, and his judgment will not be lightly set aside. (*People* v. *Richardson*, 17 Ill.2d 253; *People* v. *Pride*, 16 Ill. 2d 82; *People* v. *Arnold*, 2 Ill. 2d 92.) From this record we cannot see that the trial judge could have reached any conclusion but one of guilt.

Defendant also complains that certain newspaper articles published between June 18 and June 21, 1959, contained [fol. 117] alleged criticism of the trial judge by the State's Attorney, and that these articles in some way prejudiced defendant. It is sufficient answer to say that the trial of this case commenced after the publication of the articles, and defendant made no timely application for change of venue, but was content to submit her case to the judge without a jury. Nor do we find the slightest indication of prejudice on the part of the trial judge in the record.

We have examined numerous other allegations of error and find that they are of insufficient merit to justify further discussion. Suffice it to say that, on the entire record, the defendant received a fair trial and was proved guilty beyond a reasonable doubt. The judgment of the trial court must accordingly be affirmed.

Judgment affirmed.

[fol. 118]

IN THE SUPREME COURT OF ILLINOIS

No. 35748

Error to Criminal Court, Cook County
59—212

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

BEATRICE LYNUMN, Plaintiff in Error.

JUDGMENT—December 1, 1960

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Criminal Court of Cook County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

[fol. 119] [File endorsement omitted]

[fol. 120]

IN THE SUPREME COURT OF ILLINOIS

March Term, 1960

[Title omitted]

PETITION FOR RE-HEARING—Filed December 15, 1960

May It Please the Court:

In presenting this petition for re-hearing, we do so with sincerity and not as a matter of form; for we cannot understand the court's failure to pass upon so many points raised in our original brief except that the court either overlooked, or misapprehended our points, or both.

[fol. 121] The court, we believe, overlooked the history of the Narcotic Act in the various legislative enactments since 1931, which we contended on pages 47 to 50 of our brief was sufficient to overrule the case of the People v. Yeargain, 3 Ill. 2d 24, and cause the case of People v. Soward, 370 Ill. 140 at 143 to be followed.

Second: The court completely overlooked the failure of the State to prove a material allegation in the indictment, to-wit: that the quantity of narcotics was unknown to the grand jurors. This is a question that will arise in all future prosecutions until settled by this court. The point is argued on pages 50-51 of our brief.

Third: The court overlooked, and did not discuss the point raised on page 55 of our brief, wherein we allege the commission of reversible error by the trial court in permitting the interrogation of defendant about other crimes separate from the one with which she was charged. All cases hold this to be prejudicial error.

Fourth: We certainly believe that the court both overlooked and misapprehended our point VI, found on page 60 of our brief. This court admits in its opinion that strong [fol. 122] suggestions of leniency were made to defendant subsequent to her arrest and, Prior to her admissions. Her

tom of page 3 of the opinion). The court then properly holds that the decision of a trier of fact (in this case the court) will not lightly be set aside. But, the court overlooked the fact that the trial Judge overruled all objections to the competency of the aforementioned admissions which the Supreme Court admits were made under suggestions of leniency. The trial judge considered these admissions, now admittedly made under suggestions of leniency, in determining the question of defendant's guilt. In other words, without these admissions which she was tricked into making under promises of freedom from prosecution, there would have been an entirely different case for the trier of fact to consider. This court overlooked the fact that a different conclusion could have been reached without the evidence of the admissions made under promise of freedom from prosecution. Moreover, the court overlooked the fundamental fact urged under said point VI that the public policy of the State is involved here; that [fol. 123] it is abhorrent to justice to trick citizens into admissions and use such admissions to convict. We feel this court overlooked the decision of Brown v. Mississippi, 297 U. S. 276 at 286, found on page 67 of our brief. Surely, this court overlooked the fact that had the prisoner been beaten into making admissions, the admissions would have been rejected as evidence; and this court then overlooked the fact that admissions obtained by promises of immunity are just as vicious and constitute a denial of due process of law.

Fifth: And in this connection, the court overlooked the fact that admissions, to be competent, must be freely and voluntarily made; and that they must not be induced by another by the remotest fear of injury or the slightest hope of benefit or reward; and if admissions are so made, they are incompetent, as the court will not weigh the amount of influence produced by the illegally obtained admissions, but will hold all of it to be incompetent. See People v. Heeke, 302 Ill. 624 at 627; People v. Jones, 402 Ill. 231; and People v. Schwartz, 3 Ill. 2d 520, cited on pages 62 and 63 of our brief. What is so very important, and manifestly has been [fol. 124] overlooked, is the further fact that without these

admissions, which the court overruled objections to, and which the court considered against the defendant in determining her guilt or innocence—without these inadmissible admissions there would have been only the word of the discredited Zeno against the never-before-arrested Lynum. This court obviously overlooked, in declining to remand the cause, the fact that the defendant has not had an opportunity to have her case weighed by this trier of fact (the court), without these incompetent admissions held in the scale against her. Surely, this court overlooked the fact that Judge O'Connell believed Zeno to be corroborated by these erroneously admitted admissions and confessions, for Judge O'Connell steadfastly overruled objections to these confessions when the specific objection was made that they had been obtained under promises which rendered them incompetent (See abst. bottom 44, top 45 where ruling on motion to strike as being induced by promises of immunity was reserved; then the top of abst. 67 where motion to strike was renewed on the grounds that they were inadmissible as given under promises of leniency, and where the court denied the motion.

[fol. 125] Thus Judge O'Connell considered this evidence against defendant and manifestly had to consider that Zeno had been corroborated. But, as this Supreme Court says on page 3 of its opinion, these strong suggestions of leniency were made subsequent to her arrest and prior to her admissions. Therefore, this court must surely have overlooked the result which followed; namely, that Judge O'Connell considered Zeno to have been corroborated when in fact the supposedly corroborating evidence was incompetent evidence. Further, this honorable court overlooked the fact that the defendant is entitled to the benefit of the decision of the trier of fact without this prejudicial and harmful and inadmissible evidence. Did not this court overlook the fact that Judge O'Connell who alone heard and saw Zeno has the duty and task of passing on the credibility of Zeno without this prejudicial and seemingly corroborative evidence; and that this can only be done by remanding the cause? Zeno uncorroborated is vastly different from Zeno corroborated.

Finally, we feel this court assuredly overlooked the fact that the trial in chief began on the morning of June 18, [fol. 126] 1959 (abst. 28—very bottom); but the motion to suppress had already been heard and disposed of just before that, and thus there was no lawful way to secure a change of venue. The trial proper commenced on the morning of June 18, 1959, and thus while the trial was in progress—after the sustaining of the motion to suppress—and too late for a change of venue, and all unknown to defendant who was sitting in court at counsel table, the newspapers hit the street with the article assailing the trial Judge (abst. 28, 29.—rec. pages 180 and following; abst. 53, rec. page 245, showing the court recessed until 1:45 P.M. that same day Thursday, June 18, 1959). Thus was overlooked the fact that the motion to suppress had been sustained; the trial commenced in the forenoon, and had after many pages of testimony been recessed until 1:45 that same day—all before the defendant knew what was in the papers. Therefore, no proper motion for change of venue could have been asked for, and prejudice is axiomatic where a trier of fact is assailed by name in the middle of a trial.

Wherefore, defendant prays a rehearing.

Respectfully submitted,

Westbrooks, Holman, and E. F. Johnson, Attorneys for Defendant.

Claude W. B. Holman, Evelyn F. Johnson, Russell R. Debow, Of Counsel.

[fol. 127]

IN THE SUPREME COURT OF ILLINOIS

ORDER OVERRULING PETITION FOR REHEARING—January 18, 1961

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 128]

IN THE SUPREME COURT OF ILLINOIS

CLERK'S CERTIFICATE

I, Mrs. Earle Benjamin Searey, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled in this Court:

Error to Criminal Court, Cook County
59—212

No. 35748.

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

BEATRICE LYNUMS, Plaintiff in Error,

filed in this office on the 26th day of February A. D. 1960.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 4th day of April 1961.

Mrs. Earle Benjamin Searey, Clerk, Supreme Court of the State of Illinois.

[fol. 129]

IN THE SUPREME COURT OF ILLINOIS

Error to Criminal Court, Cook County
59—212

No. 35748

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

BEATRICE LYNUMN, Plaintiff in Error.

RESPONSE TO REQUEST FOR CERTIFICATE — Filed June 8, 1962

In response to a request by counsel for the plaintiff in error we hereby certify that decision of the federal claim referred to in the order of the United States Supreme Court dated November 13, 1961, was necessary to our judgment in this case.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1962

No. [redacted] 9

BEATRICE LYNUM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

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Chicago 9, Illinois
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1961

No.

BEATRICE LYNUM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

Opinion of the Court Below

The opinion of the Supreme Court of Illinois is reported at Appendix I, *infra*.

Statement of Jurisdiction

The judgment of the Supreme Court of Illinois was entered on December 1, 1960; a timely petition for rehearing was denied on 1/18/61.

The statutory provision believed to confer upon this Court jurisdiction to review the judgment in question by Writ of Certiorari is Title 28 United States Code, Section 1257 (3).

Question Presented

Whether the use by the State's Attorney of statements illegally obtained from Petitioner by threats or promises of leniency, deprived the Petitioner of her liberty without due process of law—contrary to the Fourteenth Amendment to the Constitution of the United States.

Constitutional and Statutory Provisions Involved

Constitution of the United States Amendment XIV, Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner, Beatrice Lynum, hereinafter sometimes referred to as the defendant, was indicted by the Grand Jury of Cook County, Illinois, for the crime of unlawful sale, dispensing and possession of narcotics. She was tried by Judge Harold P. O'Connell, without a jury, in the Criminal Court of Cook County on the charge of unlawful sale, dispensing and possession of narcotics. The Court returned a verdict of guilty in manner and form as charged in the indictment; and the defendant was sentenced to ten to eleven years in the Penitentiary. From this judgment, defendant sued out a writ of error to the Supreme Court of Illinois. On December 1, 1961, the Supreme Court of Illinois affirmed the judgment and on January 18, 1961, denied a certain petition for rehearing.

One James Zeno, a witness on behalf of the State, was in custody of the police for possession and sale of narcotics on January 17, 1961 (Abst. 35), facing the possibility of imprisonment in the penitentiary, being a second offender.

Zeno was told by the arresting officers that they would go light on him if he would set somebody up for them. Zeno then telephoned the defendant herein and she told him to come over. He was in her apartment a few minutes and left with a package which he said he obtained from defendant (Abst. 30), but which she denied (Abst. 99). He went out to the hall where Police Officer Sims was waiting and handed him the package and Sims opened it. Sims then told Zeno to pretend that he had left his glasses in the apartment and to call back for them. This Zeno did. The defendant, in response to this false call, came out into the hall; Sims grabbed her by the arm, told her she was under arrest and they went back into her apartment.

The defendant was told that if she cooperated, lenieney would be recommended for her, or that it would go light

with her; and her children might not be taken away from her (Abst. 42-45, 56-59). Defendant was told that her Aid to Dependent Children money would be cut off and that her two children would be taken away from her. Officer Sims told the defendant more than once that if she cooperated, they would go light on her (Abst. 64).

It was after the conversation in which defendant was told by the police officer that she had been set up and in which cooperation and lenieney were discussed, that the defendant cooperated and made her first statement of admission, "Yes, I did sell it to him." (Abst. 44, 97)

In addition to the foregoing, the Record indicates clearly that not only was the defendant set up by one Zeno who admittedly was in custody for possession and sale of narcotics (Abst. 34) and wanted to keep from going to the penitentiary if he possibly could (Abst. 35) but nothing indicates that the agents of the State had reasonable ground to believe that the defendant was predisposed to violate the law. The Record shows that the State engineered the case and did not make the effort to verify Zeno's actions but left everything up to Zeno and the State relied solely upon Zeno's word that the defendant sold narcotics to him. There is no other proof of sale.

REASONS FOR GRANTING WRIT

It is our contention that due process of law as guaranteed by the Amendment of the Constitution of the United States, has been denied to petitioner by the State of Illinois, in that a fair and just hearing has been denied to petitioner by the fraud of the State in its knowing use of illegal and incompetent evidence, secured by officers and agents of the State in gross violation of the law.

Powell v. *Alabama*, 287 U.S. 45; 77; 53 Sup. Ct. Rep. 55.

Brown v. *Mississippi*, 297 U.S. 276.

Crawford v. *U. S.*, 219 F. 2nd 207.

Bram v. *U. S.*; 168 U.S. 532.

The illegal and incompetent evidence here complained of consisted of incriminating statements secured from the defendant by officers of the State through subjection of defendant to threats that her two minor children would be taken from her if she did not "cooperate" and the further promise of leniency if she "cooperated," said statements being fraudulently offered by the State, on petitioner's trial, as a free and voluntary confession.

That this petitioner was promised leniency, there is no doubt. There is no doubt that certain promises made to her induced the confession that she made. It is well established in our law that any promise made by an officer to accused following arrest of accused is sufficient to render confession involuntary, *Crawford* v. *U. S.*, 219 F. 2nd 207; *Bram* v. *U. S.*, 168 U.S. 532, and that a confession to one in authority must not be extorted by any direct or implied promise relating to some benefit to be received by the accused in the criminal prosecution. *State* v. *Colee*, 56A2 898; 334 U.S. 851.

In the instant case, the Supreme Court of Illinois overlooked the fact that admissions, to be competent, must be freely and voluntarily made; and that they must not be induced by another by the remotest fear of injury of the slightest hope of benefit or reward; and if admissions are so made, they are incompetent, as the court will not weigh the amount of influence produced by the illegally obtained admissions, but will hold all of it to be incompetent. See *People* v. *Jones*, 402 Ill. 231; *People* v. *Schwartz*, 3 Ill. 2d 520; *Reeves v. State*, 75 S. Ct. 214, 348 U.S. 891.

In *People* v. *Heide*, 302 Ill. 624, the Court at page 627 said that under the law a confession is inadmissible if made under any promise or hope of immunity; and further held that the effect of the promise was not measurable and therefore the whole confession was inadmissible.

It is difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confession of the petitioner, and the use of the confession thus obtained as the basis for conviction and sentence was a clear denial of due process. What more coercion can there be than the threat of taking a mother's children from her. In *Brown* v. *Mississippi*, 297 U.S. 276, the Court held that the beatings suffered by the petitioners amounted to such force and violence as to coerce petitioners' confessions and that the use of their statements as confessions was denial of due process. I respectfully submit that the threats made to this mother far surpassed any physical brutality that she could possibly experience and that she was forced into confessing in order to keep her children.

What is also very important is the further fact that without these admissions, which the court overruled objections to, and which the Court considered against the defendant in determining her guilt or innocence—without

these inadmissible admissions, there would have been only the word of the discredited Zeno against the never-before-arrested Lynum. We should note well that Zeno, a second time narcotics offender, was actually pressured by the State to set somebody up. Zeno, as an agent of the State, had no alternative but to find a victim in order to save himself from the penitentiary. It must be kept in mind that the State itself, in effect, engineered this case, although it did not take care to verify Zeno's "set up." The record shows that Zeno was out of the view of the police officers for about ten minutes, that during this ten minutes when the actual sale was to have taken place, Zeno could have received narcotics from some one other than Lynum, and no one else, other than Zeno, testified that the defendant sold the narcotics to Zeno. There is absolutely no proof of sale except the word of Zeno.

CONCLUSION.

For the above and foregoing reasons, a Writ of Certiorari should issue from this Court to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

JEWEL STRADFORD ROGERS,
Chicago, Illinois,
Attorney for Petitioner.

APPENDIX A

Docket No. 35748—Agenda 19—September, 1960.
The People of the State of Illinois, Defendant in Error, v. Beatrice Lynumn, Plaintiff in Error.

Mr. JUSTICE SOLFISBURG delivered the opinion of the court:

Defendant, Beatrice Lynumn, was tried by the court without a jury in the criminal court of Cook County on the charge of the unlawful sales, dispensing and possession of narcotics. She was found guilty of the charge and sentenced to 10 to 11 years in the penitentiary. From this judgment, defendant has sued out this writ of error.

Defendant contends that the indictment should have been quashed; a new trial should have been granted; and the evidence was insufficient to establish guilt.

We turn first to the contention that the indictment was insufficient. Defendant was indicted in three successive counts, with the unlawful sale, dispensing, and possession, "otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity (the exact quantity of which is unknown to said Grand Jurors) of a certain narcotic drug, to-wit: cannabis, sometimes called marijuana, contrary to the Statute." Defendant argues that not all forms of cannabis are narcotic drugs, and the indictment must more specifically describe the type of cannabis involved. In support of this view, defendant cites *People* v. *Sourd*, 370 Ill. 140. The *Sourd case* was decided under the particular language of a prior act, (Ill. Rev. Stat. 1935, chap. 91, par. 157.) which was later amended. (Ill. Rev. Stat. 1957, chap. 38, par. 192.28—2.17.) In *People* v. *Yeargin*, 3 Ill.2d 23, we fully considered the *Sourd case* and the subsequent statutory changes, and held

that the language, "cannabis, sometimes called marijuana," sufficiently alleges a narcotic drug as defined by statute. We regard that case as conclusive here.

We next turn to the trial itself. The manner of the arrest of defendant and the nature of the proof are not unusual in narcotic cases. On January 17, 1959, one Zeno was arrested by police officers, Sims, Bryson, and Kobar, for the sale of and possession of narcotics. While in custody he agreed to "set somebody up" for the police. After phoning the defendant Lynumn, he went to her apartment with the three officers, and he was admitted. Zeno testified that he then gave defendant $28 and she gave him a package wrapped in newspaper. After 10 to 15 minutes Zeno left and gave the package to the police who examined it, discovering a crushed green plant. He then called to defendant, and as she came out into the hallway officer Sims grabbed her and placed her under arrest. They then went into her apartment where they made a search and took the $28 from her. She then admitted that she sold the package to Zeno, after the police had promised to recommend leniency. At the suggestion of the police, she then made a call to one Weaver requesting a half pound of marijuana. In twenty minutes Weaver appeared with a package containing a green substance and he was arrested. A green substance, allegedly in the package given to Zeno by defendant, was tested chemically and microscopically and it was cannabis sativa, also known as cannabis, commonly referred to as marijuana. It was admitted in evidence over defendant's objection. The police officers also testified to certain admissions of guilt made to them by defendant on January 17, 1959.

Defendant Lynumn testified that Zeno came to her apartment to pay her $23 that he owed her, and $5 extra for keeping the money so long. She denied selling or giving

anything to Zeno. She testified that she said she sold the package to Zeno, and made the call to Weaver only after the police had arrested her, told her she would lose her children and her aid to dependent children, and promised leniency if she would cooperate.

At the beginning of the trial, the court sustained a motion to suppress the $28 in currency taken from defendant at the time of her arrest. Defendant now argues that in light of that ruling neither Zeno nor officer Sims should have been permitted to testify. We see no merit in that contention. Independently of the search and seizure of the $28 both Zeno and Sims had knowledge of the fact that Zeno was given $28 by the police when he left defendant's apartment he no longer had the money. Zeno, of course, had personal knowledge of whether or not he gave the money to defendant. After the motion to suppress, no evidence was admitted to show that the $28 was found in the possession of defendant after her arrest. The testimony of the witnesses was, therefore, of facts known to them independent of any possible illegal search and seizure of the $28. *People* v. *Albea*, 2 Ill.2d 317, relied on by defendant is inapplicable here. That case determined only that a witness discovered solely by an admittedly illegal search could not testify. In *Albea*, we reiterated what we said in *People v. Martin*, 382 Ill. 192, 200: "The principle seems clear that evidence obtained independently of the illegal search may be used against the defendants." We think that rule applicable here. Both the identity of the witnesses and the facts to which they testified were independent of the search of the premises.

Defendant further objects that the marijuana introduced as an exhibit was not sufficiently identified as being the same substance which defendant allegedly gave Zeno. We have reviewed the entire record as to testimony tracing

the green substance from Zeno to officer Sims, to the police chemist, through analysis, and back to the court room. We think the chain was fully proved, and that the marijuana was properly introduced in evidence.

A further complaint is made that the court erred in admitting testimony of alleged oral admissions of defendant without proper statutory notice to defendant. (Ill. Rev. Stat. 1959, chap. 38, par. 729.) The notice to defendant stated the alleged admissions were made on January 18, while the proof showed the statements to have been made on January 17. The record clearly shows that defendant was not surprised by the error in dates, but in fact admitted the statements with the explanation that she made them after a promise of leniency. In this state of the record, we cannot see that the error in date could be prejudicial.

A review of the record does indicate, however, that strong suggestions of leniency were made to defendant subsequent to her arrest and prior to her admissions. Even in the absence of defendant's statements, there is clear proof by Zeno and the police officers that defendant gave Zeno a package containing marijuana. Upon a review of the entire record, we are convinced that the evidence fully supports the judgment of the trial court. While the character of Zeno was questionable, he was fully corroborated by the police officers and physical facts. In the absence of a jury, the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom are for the trial judge, and his judgment will not be lightly set aside. (*People* v. *Richardson*, 17 Ill.2d 253; *People* v. *Pride*, 16 Ill. 2d 82; *People* v. *Arnold*, 2 Ill. 2d 92.) From this record we cannot see that the trial judge could have reached any conclusion but one of guilt.

Defendant also complains that certain newspaper articles published between June 18 and June 21, 1959, contained alleged criticism of the trial judge by the State's Attorney, and that these articles in some way prejudiced defendant. It is sufficient answer to say that the trial of this case commenced after the publication of the articles, and defendant made no timely application for change of venue, but was content to submit her case to the judge without a jury. Nor do we find the slightest indication of prejudice on the part of the trial judge in the record.

We have examined numerous other allegations of error and find that they are of insufficient merit to justify further discussion. Suffice it to say that, on the entire record, the defendant received a fair trial and was proved guilty beyond a reasonable doubt. The judgment of the trial court must accordingly be affirmed.

Judgment affirmed.

APPENDIX B

Docket No. 35748
The People of the State of Illinois, Defendant in Error, v. Beatrice Lynumn, Plaintiff in Error.

PETITION FOR RE-HEARING.

MAY IT PLEASE THE COURT:

In presenting this petition for re-hearing, we do so with sincerity and not as a matter of form; for we cannot understand the court's failure to pass upon so many points raised in our original brief except that the court either overlooked or misapprehended our points; or both.

The court, we believe, overlooked the history of the Narcotic Act in the various legislative enactments since 1931, which we contended on pages 47 to 50 of our brief was sufficient to overrule the case of the *People* v. *Yeargain*, 3 Ill. 2d 24, and cause the case of *People* v. *Sourd*, 370 Ill. 140 at 143 to be followed.

Second: The court completely overlooked the failure of the State to prove a material allegation in the indictment, to-wit: that the quantity of narcotics was unknown to the grand jurors. This is a question that will arise in all future prosecutions until settled by this court. The point is argued on pages 50-51 of our brief.

Third: The court overlooked, and did not discuss the point raised on page 55 of our brief, wherein we allege the commission of reversible error by the trial court in permitting the interrogation of defendant about other crimes separate from the one with which she was charged. All cases hold this to be prejudicial error.

Fourth: We certainly believe that the court both overlooked and misapprehended our point VI, found on page 66

of our brief. This court admits in its opinion that strong suggestions of leniency were made to defendant subsequent to her arrest and PRIOR to her admissions (bottom of page 3 of the opinion). The court then properly holds that the decision of a trier of fact (in this case the court) will not lightly be set aside. But, the court overlooked the fact that the trial Judge overruled all objections to the competency of the aforementioned admissions which the Supreme Court admits were made under suggestions of leniency. The trial judge considered these admissions, now admittedly made under suggestions of leniency, in determining the question of defendant's guilt. In other words, without these admissions which she was tricked into making under promises of freedom from prosecution, there would have been an entirely different case for the trier of fact to consider. This court overlooked the fact that a different conclusion could have been reached without the evidence of the admissions made under promise of freedom from prosecution. Moreover, the court overlooked the fundamental fact urged under said point VI that the public policy of the State is involved here;

that it is abhorrent to justice to trick citizens into admissions and use such admissions to convict. We feel this court overlooked the decision of *Brown* v. *Mississippi*, 297 U. S. 276 at 286, found on page 67 of our brief. Surely, this court overlooked the fact that had the prisoner been beaten into making admissions, the admissions would have been rejected as evidence; and this court then overlooked the fact that admissions obtained by promises of immunity are just as vicious and constitute a denial of due process of law.

Fifth: And in this connection, the court overlooked the fact that admissions to be competent, must be freely and voluntarily made; and that they must not be induced by

another by the remotest fear of injury or the slightest hope of benefit or reward; and if admissions are so made, they are incompetent, as the court will not weigh the amount of influence produced by the illegally obtained admissions, but will hold all of it to be incompetent. See *People* v. *Heide*, 302 Ill. 624 at 627; *People* v. *Jones*, 402 Ill. 231; and *People* v. *Schwartz*, 3 Ill. 2d 520, cited on pages 62 and 63 of our brief. What is so very important, and manifestly has been overlooked, is the further fact that without these admissions, which the court overruled objections to, and which the court considered against the defendant in determining her guilt or innocence—without these inadmissible admissions there would have been only the word of the discredited Zeno against the never-before-arrested Lynum. This court obviously overlooked, in declining to remand the cause, the fact that the defendant has not had an opportunity to have her case weighed by this trier of fact (the court), without these incompetent admissions held in the scale against her. Surely, this court overlooked the fact that Judge O'Connell believed Zeno to be corroborated by these erroneously admitted admissions and confessions, for Judge O'Connell steadfastly overruled objections to these confessions when the specific objection was made that they had been obtained under promises which rendered them incompetent (See Abst. bottom 44, top 45 where ruling on motion to strike as being induced by promises of immunity was reserved; then the top of Abst. 67 where motion to strike was renewed on the grounds that they were inadmissible as given under promises of leniency, and where the court denied the motion.

Thus Judge O'Connell considered this evidence against defendant and manifestly had to consider that Zeno had been corroborated. But, as this Supreme Court says on page 3 of its opinion, these strong suggestions of leniency

were made subsequent to her arrest and prior to her admissions. Therefore, this court must surely have overlooked the result which followed: namely, that Judge O'Connell considered Zeno to have been corroborated when in fact the supposedly corroborating evidence was incompetent evidence. Further, this honorable court overlooked the fact that the defendant is entitled to the benefit of the decision of the trier of fact without this prejudicial and harmful and inadmissible evidence. Did not this court overlook the fact that Judge O'Connell who alone heard and saw Zeno has the duty and task of passing on the credibility of Zeno without this prejudicial and seemingly corroborative evidence; and that this can only be done by remanding the cause? Zeno uncorroborated is vastly different from Zeno corroborated.

Finally, we feel this court assuredly overlooked the fact that the trial in chief began on the morning of June 18, 1959 (Abst. 28—very bottom); but the motion to suppress had already been heard and disposed of just before that, and thus there was no lawful way to secure a change of venue. The trial proper commenced on the morning of June 18, 1959, and thus while the trial was in progress—after the sustaining of the motion to suppress—and too late for a change of venue, and all unknown to defendant who was sitting in court at counsel table, the newspapers hit the street with the article assailing the trial Judge (Abst. 28, 29,—Rec. pages 180 and following; Abst. 53, Rec. page 245, showing the court recessed until 1:45 P.M. that same day Thursday, June 18, 1959). Thus was overlooked the fact that the motion to suppress had been sustained; the trial commenced in the forenoon, and had after many pages of testimony been recessed until 1:45 that same

day—all before the defendant knew what was in the papers. Therefore, no proper motion for change of venue could have been asked for, and prejudice is axiomatic where a trier of fact is assailed by name in the middle of a trial.

Wherefore, defendant prays a rehearing.

Respectfully submitted,

WESTBROOKS, HOLMAN,
and E. F. JOHNSON
Attorneys for Defendant.

CLAUDE W. B. HOLMAN,
EVELYN F. JOHNSON,
RUSSELL R. DEBOW,
Of Counsel

APPENDIX C

UNITED STATES OF AMERICA

State of Illinois,
Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January in the year of our Lord; one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present: Walter V. Schaefer, Chief Justice

Justice Joseph E. Daily	Justice George W. Bristow
Justice Harry B. Hershey	Justice Ray L. Klingbiel
Justice Byron O. House	Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searey, Clerk.

Be It Remembered, that, to-wit: on the 18th day of January, A.D. 1961, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Docket No. 35748—Error to Criminal Court, Cook County
People State of Illinois, Defendant in Error, v.
Beatrice Lynumn, Plaintiff in Error.

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

APPENDIX D

Portions of Record Relied Upon

JAMES ZENO, called as a witness on behalf of the State was examined and testified as follows:

Direct Examination by Mr. Conley.

My name is James Zeno.

Mr. Holman: I have an objection to make after the witness has given his name, and my objection is that any evidence coming from this witness is improper after the motion to suppress. The Albea case squarely substantiates it. The entry by stealth vitiates the proceedings. In the Albea case, they said that whatever the informer was going to testify to is likewise inadmissible because what the informer found out as a result of this illegal arrest of this person Albea is not admissible in evidence.

The Court: Your motion will be denied. Proceed, please.

Witness resuming: I live at 6529 South Kenwood.

186 About January 17, 1959, I had a conversation with police officers from Woodlawn Station at about 4:45 P.M. I called Beatrice Lynumn's home.

187 I know Beatrice Lynumn prior to January 17th. I talked to her approximately 5 to 6 times on the telephone. I knew her voice. It was approximately 5:00 o'clock when I talked to her from the Woodlawn District.

Q. What did you say to her and what did she say to you?

Mr. Holman: Same objection, lack of a proper foundation.

The Court: Objection overruled.

188 I said I was coming over and would like to purchase a can and she told me to come over but not to come in because there was someone there. I said I had part of the money I owed. I would pay her part of the money I owed her. She said come on over. Then I went over with Officers Bryson and Sims and went upstairs. I rang the bell and went upstairs and she let me in and told me to come on in, that it was all right. I said hello, how had she been doing? I had $28.00.

189 Mr. Holman: I object to that. The money is suppressed, if the Court please, and you have no right to offer that suppressed evidence. That has been suppressed and is not admissible.

The Court: Overruled.

Witness: I gave her $28.00. I owed her $10.00 and gave her $18.00 in addition. She told me to sit in the kitchen and I sat in the kitchen for a few minutes and she brought back this package.

190 It was in newspaper and I took it. She didn't say anything. She just handed it to me. I stood up and I said, I think I had better be leaving because you have company. I passed the door and the fellow was sitting in the living-room and I nodded. She said something, I don't remember what.

Mr. Holman: I move to strike out "She brought me a package" I renew my objection and move to strike it out because it is suppressed. It is evidence that is suppressed.

The Court: The motion will be denied.

Witness: Then I left the apartment and went outside to the corridor and she followed me out there. When she came back to her apartment, Officer Sims came up to me and took the package and opened it and looked in it.

191 There is one door, outside door that leads from the stairwell; then there is a hallway about 7 to 8 yards long before you enter into her apartment. When I left she went out with me to the outside door. She opened the door. The door was still open when she went back. I stayed inside this hallway. Officer Sims took the package and opened it up.

192 I stood there and called and told her I left my glasses there.

193 She came out of the inner door. She came all the way out back to me and then Officer Sims grabbed her by the arm and told her she was under arrest and we went back into the apartment. There was no conversation between me and the defendant when she came out in response to my call; no conversation. This happened in Chicago, Illinois.

Mr. Holman: Motion to strike his testimony on the grounds that it is within the prohibition as laid down in the Albea case.

194 The Court: Motion denied.

Cross Examination by Mr. Holman.

I did not say that Miss Lynumn stepped out of her door and walked towards me and Officer Sims grabbed her by the arm, that is wrong. She had gotten up to me before Officer Sims grabbed her by the arm. That is approximately—

195 She walked about 14 feet out into the hallway and then Officer Sims grabbed her by the arm. He said you are under arrest.

196 He said you are under arrest after she had reached me, then he said that. I don't remember whether he grabbed her by the arm first or said you're under arrest first. I don't remember even if they happened at the same time. He arrested her by placing his arm

at or about the position of her elbow. I wasn't noticing or paying any attention and cannot say whether it was with force or not.

197 Whichever one came first, it was still a matter of short seconds between the grabbing of the arm and the statement you are under arrest; it was at about the same time. And both happened out there in the hall after she had come on out. I went with Sims and Miss Lynumn back into the apartment after Sims had grabbed her arm and placed her under arrest in the hallway. Over the telephone I did tell her that I was going to pay her some money and I did owe her some money. I don't remember how long I was in the hallway. It was about 4 or 5 minutes, something like that. It wasn't over ten minutes.

198 I was not out of the sight of the Officers more than 10 minutes. I did see Mr. Harrington in the apartment but I don't remember if I spoke to him. I don't remember if I was introduced to him. I am a table waiter. I am now waiting to be sentenced to the penitentiary.

199 Besides waiting to be sentenced to the penitentiary, I don't remember when I did other waiting. I wasn't on any legitimate job in January of 1959. The last time I drew a pay check from any employer wasn't as a waiter. I don't remember the exact date because it has been so long now.

200 I was locked up in December. I was in jail in December. I was in jail from December '56 to December, 1957. I was in jail this period of time for possession of narcotics.

201 I served 2 years in the Bridewell from '56 to '58, '56 and '57, and got out in '57. I didn't go to work. When I had the conversation at the Woodlawn police station I had been out of the Bridewell about 13 months. In

that 13 month period, I did not work for anybody, I was on the welfare.

202 I was on relief, welfare. I got $30.00 a month and lived on $30.00 a month. When I wasn't on relief I was with friends. The friend I stayed with was a Mr. Dade.

203 He lived at 5201 Woodlawn. I lived with Mr. Dade 7 months. He fed me and let me have room and board there. I did no work for him at all. He is a Cook. I was already in custody on January 17th when I went to the Lynumn apartment. I had been in custody 4 or 5 hours for possession and sale of narcotics. I had possessed and sold narcotics to somebody when they arrested me. It was not a bum rap or else I wouldn't be here.

204 Before I went to the Lynumn apartment I was arrested for possession and sale and that was before I had talked to Miss Lynumn. I had possessed some narcotics from some one else. I was in my house when the police arrested me. They found no narcotics on me when they arrested me. There was someone there at my house who was sent to buy from me and I sold the narcotics to that somebody. When I sold the narcotics to that person the police came in and arrested me.

205 And charged me with possession and sale of narcotics. Sims and Bryson were the arresting officers. They told me that if I would set somebody up for them, they would go light on me. It was three or four or five hours from the time I was arrested and carried to the Woodlawn station before I made telephone contact with Miss Lynumn. The police officers told me that if I would set somebody up for them, they would

go light on me and I was hoping that they would go light on me.

206 I knew I would have to be classed as a second offender and would have to serve time in the penitentiary. I knew I was penitentiary bound. I wanted to keep from going to the penitentiary if I possibly could. I still want to keep from going to the penitentiary if I possibly can. I wouldn't have to lie to keep from going to the penitentiary. I won't tell any kind of lie to keep from going, because I don't have to lie. I wouldn't lie to help myself.

207 I have conscientious scruples against telling a lie.

Q. You have no conscientious scruples against peddling narcotics, though, have you?

Objection. Sustained.

I did peddle narcotics though and it didn't trouble my conscious. I am the same James Zeno that is under indictment in cause number 59-211 pending in this same Court.

208 I am that same Zeno and I pleaded guilty on March 11, 1959. I told the Judge that I was guilty of peddling narcotics. I told him I was guilty of selling narcotics. I want to help myself. I am trying to help myself when I entered that plea.

• • •

The Court: Now you said that the officers told you that if you set somebody up for them, they would go easy on you?

The Witness: No, your Honor. They had said they would put in a recommendation for leniency.

The Court: Who said that?

The Witness: Officer Sims.

The Court: Officer Sims?

The Witness: Yes, your Honor.

The Court: That is all I have in mind. Thank you.

You can call your next witness if there are no further questions of this witness.

218 GEORGE T. SIMS, JR. called as a witness for the State was examined and testified as follows:

My name is George T. Sims, Jr., Police Officer, City of Chicago, and so employed January 17, 1959.

219 About 4:45 P.M. that day I conversed with Zeno at the Woodlawn station. Zeno, Bryson, and Kobar were present. After the conversation we got in an automobile, the four of us and drove to 6518 University. And I gave Zeno $28.00.

Objection by Mr. Holman; overruled by Court.

By agreement, one standing objection in the record as to the money was deemed sufficient.

Witness: I searched Zeno at the time of his arrest and after he was taken to the Woodlawn Station.

220 At approximately 3:00 P.M. or 3:30 P.M. I made a detailed search of his person. The first search took place at his home. He was stripped to the nude and everything was taken from him. He was given his clothing to put back on. He had nothing left in his possession. After I took him to the police station, we had a further conversation: I turned back over to him books that he asked for with telephone numbers in it; then I took the book from him again and turned over to him ten cents and he made a call.

221 He had nothing on him in the station when he was searched other than the clothes he was wearing. We drove from the station to 6518 South University and we parked on the east side of the street. I turned over to Zeno $28.00 in United States currency. Zeno, myself and Bryson got out of the car with Kobar. Kobar went to the rear of the building. Bryson and

I entered the vestibule with Zeno. He rang the third floor apartment bell.

222 The door was buzzed and Zeno went into the inner door which leads into the hallway leading upstairs. I went into the door with Zeno and Bryson. After we got inside, Zeno trotted up the stairs; I tip-toed up until I got to the second floor. When I arrived at the second floor, Zeno had arrived at the third floor. He stood there a moment and the third floor door opened. As the door opened, I tip-toed and peered over to the third floor and saw Lynumn having a conversation with Zeno. The two of them disappeared into the doorway and the door was closed. I am indicating the defendant in this cause, Beatrice Lynumn, as the woman that had admitted Zeno into the apartment. After the door was closed, I waved to Bryson and the two of us walked upstairs and stood next to the door that we had seen close with Zeno and Lynumn entering.

223 As we stood at the door, I put my ear to the door, but heard nothing. About five minutes later I heard a door on the inside of the apartment open and footsteps on the inside and shortly after that Zeno emerged from the door that he had previously gone into. He had in his hand the newspaper wrapped package which he turned over to me. It was a small package, about four or six inches long and three or four inches square and it had a little depth to it about an inch and a half. I opened the package; I noticed crushed green plant on the inside; I poured some of it into my hand and after examining it I talked to Zeno.

224 Objection by Mr. Holman that "examining" is a conclusion, but "No objection to 'pouring it into his hand' as that is contrary to what he testified to on the motion to suppress." No ruling by court.

Witness: I looked at the plant and I felt the plant and I had a conversation with Zeno after which Zeno called Beatrice and said he had left his glasses.

225 Objection by Mr. Holman; overruled by court.

Witness: He called Beatrice and said he had left his glasses in the apartment; she opened the door and as she came out into the hall, I was standing in the common hall, in the vestibule part with the door partly closed. As she walked down the hallway toward Zeno, I opened the door and stepped into the hallway. I told her she was under arrest and I grabbed her by her hands, both hands. At this point, I told her that she had been set up, that she had just made a sale and I showed her the package. She said, "I have company on the inside. I don't want"—

226 I told her she had been set up by Zeno. I showed her the package, she said I have company in the house; I don't want to let him know what's happening. She said, when we go in, don't go in the living-room. We can go in the bedroom and finish the conversation. We walked in the door and went into the apartment and the first door we came to was the bedroom; so she and I went into the bedroom and Bryson went in there with us. I think we let Kobar in first and after he came into the apartment, she and Officer Bryson and I went into the bedroom.

227 I told her then that Zeno had been trapped and we asked him to cooperate; that he had made a phone call to her and subsequently had purchased the evidence from her. I told her then if she wished to cooperate, we would be willing to recommend to the State leniency in her case. At that time, she said, "Yes, I did sell it to him." And she said "I'm in bad shape. I don't have enough money hardly to pay my rent." She said "I would be willing to cooperate" and she did. She made a telephone call.

Mr. Holman: Now, may I be heard on that portion of it, Judge?

The Court: Surely.

228-229 Objection by Mr. Holman and motion to strike, as being induced by promises of immunity.

230 The Court: I will reserve ruling on your motion to strike it until the close of the State's case. Proceed, please.

Cross Examination of Officer Sims.

I already said I took Miss Lynumn in the apartment by her two hands.

252 I had complete physical possession of her two hands. I had turned her hands loose when we went into the apartment. I went in ahead of her. The door was still open. The apartment door was still ajar and I walked into the apartment and she followed me in. We were together but I was beside her. I believe Bryson and Zeno were behind her. She was between two police officers. We proceeded in that fashion to enter her apartment. We hadn't been in there long before we told her she had been set up and that if she would cooperate we would go light on her. It must have been about 10 minutes.

253 The rest of the time during that 10 minutes I think I had opened the back door for Kobar and had questioned the gentleman that was in the apartment. Then I came back in the bedroom where she was talking to Bryson. I exhibited no gun at any time, nor pulled one. Officer Kobar talked to the defendant while I was in the apartment. I don't believe Kobar talked to her after the call was made and we were waiting; he talked to her then. I don't know what Kobar said

to her. While I was talking to her in the bedroom, she told me that she had children and she had taken the children over to her mother-in-law, to keep her children.

254 Q. Did you or anybody in your presence indicate or suggest or say to her that her children would be taken away from her if she didn't do what you asked her to do?

Witness: I believe there was some mention of her children being taken away from her if she was arrested.

The Court: By whom? Who made mention of it?

The Witness: I believe Officer Bryson made that statement and I think I made the statement at some time during the course of our discussion that her children could be taken from her. We did not say if she cooperated they wouldn't be taken. I don't know whether Kobar said that to her or not. I don't recall if Kobar said that to her or not.

255 I don't remember all of the conversation Kobar had with her. I am confused whether I let Kobar in or not. I don't recall which one of us let him in but he was in the apartment very shortly after we went in. I am not really confused. I just don't recall whether he made the comment to her. There was some mention—I don't know whether I let him in or whether Bryson let him in but he did come in the apartment. I don't remember that. I believe I am correct in saying that Bryson and I were the only ones prior to her calling Weaver that talked to her because we were in the bedroom with her and Kobar wasn't in there with her.

256 Bryson talked to her about her children and I did too. We didn't tell her in that manner that if she didn't cooperate she would lose her children. We did

mention—I think the way it came up, we noticed the clothing in the bedroom. She had been cleaning up around the house.

257 I asked her who the clothing belonged to. She said they were her childrens. I asked how many she had and she said 2. I asked her where they were or who took care of them. She said the children were over at the mother's or mother-in-law. I asked her how did she take care of herself and she said she was on ADC. I told her that it we took her into the station and charged her with the offense, that the ADC would probably be cut off and also that she would probably lose custody of her children. That was not before I said if she cooperated, it would go light on her. It was during the same conversation. It was all during the same conversation because I never left the room until Bryson was talking to her and then she made the call and then I left the room.

258 I believe it was all before she made the telephone call. The first statement she made to me after I told her that Zeno had set her up, she said I know what's happening, but I don't want my friend to know that I am involved in narcotics. So, when you go into the apartment, don't mention anything about dope in his presence. That isn't all that was said but that was the first statement and that was after I had arrested her and then I took her back into the apartment.

259 I took her to a different from where the occupant was. She asked me what would this cooperation mean to her, and what would happen to her if she cooperated. I told her I wasn't in a position to tell her definitely what could happen but I would make a recommendation to the State's Attorney that if she cooperated, she should be entitled to leniency. And

after that, she cooperated. I don't think she told me anything about her participation in the Zeno affair. She and Zeno had a conversation in my presence.

260 I don't know if she talked to Bryson after that. I remember when I placed her under arrest, I told her she had been set up and she said she understood.

261 She stated that she knew what had happened because Zeno was present. She told me she would wish that I wouldn't mention anything in the presenc of this person in the apartment. I don't recall the next date I saw her after the 17th. I don't think I saw her the next day at all, Nor talked with her. I don't know whether Bryson or Kobar did but I don't think I did. They did not talk to her in my presence.

262 She did not make any oral confessions in my presence on the 18th. I didn't see her on the 18th. As a matter of fact; I didn't see her at all on the 18th that I recall. She didn't make any statement in my presence on the 18th that I remember.

Objection by Mr. Holman that no proper notice was furnished about alleged oral confessions.

The Court: Is there any question about that, Mr. Conley?

Mr. Conley: No, Judge, we will stipulate that the

263 list of witnesses we had given to Mr. Holman or counsel at that time is listed as the 18th of January.

Mr. Holman: And that no statement was ever furnished to this defendant at arraignment or any other time that she would be called upon to meet any alleged confessions made on the 17th.

The Court: I think that is what counsel means.

Mr. Conley: We will agree.

The Court: Yes.

Mr. Conley: The statement says as to the 18th.

Witness: I didn't give the package that I got from Zeno to a messenger, I gave it to Officer Kobar. I don't

know what he did with it. It was in the envelope when I gave it to him. He put it in his pocket and that is the last time I saw it. The last time I saw it, it was in his pocket in his possession.

264 I had no conversation with the defendant on the 18th. At one time in my presence Mr. Zeno did not have on any shoes. That is when we first broke into his apartment; he was partly clothed, not fully dressed. We were in his apartment long enough to make a search, a half hour, forty-five minutes. Then he was taken to the station. He must have been in the station in custody about an hour and a half or two hours prior to calling Miss Lynumn.

265 With respect to the time I took him into the station and the time I took him over to Lynumn's, I searched him just before he made the call. He was in a little room with me and Bryson and Kobar. We went over to Lynumn's apartment in my automobile. The only time he was out of my sight was five or six or seven minutes that he was inside the apartment on the third floor at 6518 University. In that five or seven minutes, I don't know actually who he was talking to of my own knowledge. When I got into the apartment, there were two people in the apartment. Or rather there was only one in the apartment; we went in with the other. That made two people in the apartment.

266 There was 6 of us when Kobar, myself, Bryson, and Lynumn were there. There was one other person in the apartment when I went in. Kobar was at the back door. I don't know anything about the door that goes down into the basement from the 3rd. floor. I didn't know that day there was such a door and still don't know it. I don't know of my own knowledge whether Zeno used that door or anything about that door.

• • •

377 BEATRICE LYNUMN, defendant, called as a witness in her own behalf was examined and testified as follows:

Direct Examination by Mr. Holman.

My name is Beatrice Lynumn. I live at 5323 South Michigan. In January 1959 I lived at 6518 University. It is a six flat building facing east and I have the third floor rear apartment. There are 3 floors on each side
378 of the building. Two apartments to each floor. On the top floor on the 18 side I had the rear apartment. On January 17th Zeno called me. He owed me money, $23.00. I had loaned him this money about three months previously. He said he was being evicted and had money en route from his sister and if I could lend him the money, he could pay the rent; and I haven't seen him since. That was three months previously. On this day he told me on the phone he was sorry he had not been around to pay the money but he had been in pretty bad shape. But now he had come into some money and would come and pay me.

379 He came. As I went down the hallway, the hallway opened up into the hallway. It faces me when I opened the door. I opened it back ward me. It comes clear on back and I can observe the hall. Zeno was in view when I opened the door to admit him. No one else was in view. I was standing down the hall far enough to be out of view of anyone standing on the landing. I came back into my apartment with Zeno and took him into the living room.

380 I introduced him to Mr. Harrington who was sitting on the couch. We sat down, we had conversation for 15 or 20 minutes. Then Zeno said "I am going to give you the money I owe you, because I got to go." That was in the living room where Harrington was. He gave me the money and I let him out. Later, I heard his voice call from outside the door saying he had

left his scarf. I always thought he said he left his scarf; that is what I understood him to say.

381 He had not left any scarf nor any eye-glasses; when he called for whatever it was, scarf or eyeglasses, I opened my apartment door to tell him he hadn't left anything there. The first thing I saw when I opened up the door was a strange man standing in the door. I know now that man to be Mr. Sims. When I opened the door to tell Zeno he didn't leave his scarf and saw this strange man standing there, I made an effort to close the door. He forced the door opened, put his foot in there and took me by the hand and led into into the living room.

382 In the living room, Mr. Harrington attempted to rise when he saw this man leading me and forcing me like this; and Sims said "police officer", and took me into the bedroom. When we got into the bedroom he said he had gotten a package from Zeno. That I had been set up; that Zeno said I have sold him narcotics and that I had better tell who my source of supply was.

I told him I hadn't sold Zeno; I didn't know anything about narcotics and I had no source of supply. He kept insisting I had a source of supply and had been dealing in narcotics. I kept telling him I did not and that I knew nothing about it. Then he started telling me I could get 10 years and the children could be taken away, and after I got out they would be taken away and strangers would have them, and if I could cooperate he would see they weren't; and he would recommend leniency and I had better do what they told me if I wanted to see my kids again. The two children

383 are three and four years old. Their father is dead; they live with me. I love my children very much. I have never been arrested for anything in my whole life before. I did not know how much power a police

man had in a recommendation to the State's Attorney or to the Court. I did not know that a Court and a State's Attorney are not bound by a police officer's recommendations. I did not know anything about it. All the officers talked to me about my children and the time I could get for not cooperating. All three officers did. After that conversation I believed that if I cooperated with them and answered the questions the way they wanted me to answer, I believed that I would not be prosecuted. They had said I had better say what they wanted me to, or I would lose the kids. I said I would say anything they wanted me to say. I asked what I was to say. I was told to say "You must admit you gave Zeno the package" so I said, "Yes, I gave it to him".

385 They asked me to make a telephone call. They said, after I had admitted I had given Zeno the package, that I would have to call my source of supply. I never would have made that admission except for the promise Sergeant Sims made to me. When they asked me to call up somebody, I called Mr. Weaver who I knew socially. During this particular time there had been a big scandal about "Sin corner". Everybody was discussing sin corner and dope. I had heard Weaver's name. I knew Weaver but I didn't know the rest. When they were pressing me about the children, that I had better do what they said, I called him. I said hello, how are you. The weather had been bad,

386 how are you. Very well. General conversation. I did not ask him to bring anything. I didn't expect him to bring anything. I didn't know anything about him bringing anything. When I hung up the telephone from the conversation with Weaver, Bryson said "The son of a bitch isn't coming, you tipped him off". All

I have said is how is the weather and so forth. General conversation. On that day I did not give to Zeno,
387 nor did Mr. Zeno ask me in the telephone conversation in which he said he was going to pay me the money he owed me, he did not say anything about having a can ready for him or anything like that.

He said here is the money I owe you. He owed me $23.00. When he gave me the money, he gave me $28.00. I asked him what the $5.00 was for and he said it was because I had it so long. I did not say to Mr. Zeno let's go into the kitchen. Nothing like that. I did not have any transaction with him in the kitchen nothing even like that. I did have a conversation with Zeno as Zeno and I went in the patrol wagon to the station. The first thing I asked him when I got in the patrol wagon was "why did you tell a lie on me?" He said he had to set up somebody. I asked him why me. He said because he had been in trouble twice before.

388 His sister had gotten him out of trouble both times. She told him she wasn't going to get him out of trouble again. When the officers wanted him, he knew he owed me money and that he could get into my apartment so he set me up. What he testified to in here is untrue. I did tell him that it was a dirty trick. I did not tell him I did not blame him neither in the apartment nor in the patrol wagon. I did not have any conversation with Officer Sims in the hall. We had no conversation whatsoever in the hallway and I did not tell him I knew I was being set up, I knew nothing like that.

389 Defendant's Exhibits 2 to 11, inclusive, marked for identification by the reporter.

Witness Resuming: Zeno in the conversation, said nothing about coming over to buy a can of anything.

I did not tell him that I wanted him to sit in the kitchen because I had company; nothing like that. I did not hand him a package in newspaper, 1, 1-A, nor 1-B; I didn't hand him anything. The only reason I had for admitting it to the police was the hope of saving myself from going to jail and being taken away from my children. The statement I made to the police after
390 they promised that they would intercede for me, the statements admitting the crime, were false.

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No federal constitutional question was raised at any time in the State courts. Therefore no federal question is presented 1

Argument:

I—Certiorari must be denied because petitioner did not raise any federal question at any time during or at any stage of this case in the State courts... 1

Cases Cited.

Parker v. Illinois, 313 U. S. 560..... 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

NO. 898

BEATRICE LYNUM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT, ILLINOIS, IN OPPOSITION TO THE PETITION FOR CERTIORARI.

NO FEDERAL CONSTITUTIONAL QUESTION WAS RAISED AT ANY TIME IN THE STATE COURTS. THEREFORE NO FEDERAL QUESTION IS PRESENTED.

Although petitioner did object to the introduction of her confession on the ground that it was involuntary, it

does not appear that she invoked any provision of the Constitution or other laws of the United States at any time or at any stage of this case while it was pending in the courts of Illinois.

This Court's Rule 23, Paragraph (f) provides:

> "If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and in the manner in which, the federal questions sought to be reviewed were raised."

No such statement occurs in the petition because there does not appear to be any basis in the record for such a statement.

ARGUMENT.

I.

Certiorari must be denied because it does not appear that petitioner raised any federal question at any time during or at any stage of this case in the state courts.

The requirement that a petitioner for this court's writ of *certiorari* must appropriately raise and aptly preserve for review a federal question is prerequisite to this court's jurisdiction.

Although this court does have discretion on application for *certiorari* to decline to review a case from a state or lower federal court even though a federal question was properly raised in the state court, this court's jurisdiction to review that question does not obtain if the question has not been preserved for appellate review in the state's highest court that had jurisdiction to pass upon the question. See *Parker* v. *Illinois*, 313 U. S. 500, in which this court, having granted *certiorari* to reach important federal questions in the field of freedom of speech, freedom of public assembly and due process with respect to alleged summary limitation of those freedoms by exertion of the power to punish for contempt, dismissed that case without decision on the merits when it appeared on full argument that even though the Fourteenth Amendment had been properly invoked in the trial court, the point was waived because it was not preserved under Illinois' principles of appellate judicature.

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I. Illinois observes the rule that contentions based upon the Federal or State Constitution must be made in the trial court or they are not preserved for consideration on appeal or writ of error. Therefore no Federal constitutional question is preserved for review 3

Cases Cited.

Pierce v. Carpentier, 20 Ill. 2d 526..... 3

People v. Touhy, 397 Ill. 19..... 3

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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

This Court has asked Illinois to file a second response to the petition for *certiorari* in this case "in light of the allegations made by petitioner at pages 66-67 in her brief in the Supreme Court of Illinois."

"It is abhorrent to justice to obtain statements under promise of leniency; to renege on the promise, and then use such statements to convict a citizen and incarcerate her in the penitentiary for the next ten years; and such action constitutes a denial of due process of law under both the state and federal constitutions."

This response is addressed to the question stated by the Court:

PETITIONER DID NOT INVOKE ANY PROVISION OF THE CONSTITUTION OF THE UNITED STATES IN THE CRIMINAL COURT OF COOK COUNTY.

The petition for *certiorari* in this case, although prepared by counsel and not by petitioner *pro se*, does not disclose that petitioner ever raised any Federal constitutional question at any time in either the Criminal Court of Cook County or in the Supreme Court of Illinois.

It now appears that petitioner did assert *in the Supreme Court of Illinois* that the reception in evidence of her confession violated the Due Process Clause of the Federal Constitution in that it appears that the confession was obtained by promises of leniency. But it does not appear that petitioner ever invoked the Fourteenth Amendment or any other provision of the Constitution of the United States in the trial court.

Although the Supreme Court of Illinois does discuss petitioner's contention, it does not treat that contention as based upon any invocation of the Constitution of the United States or the Constitution of Illinois.

I.

ILLINOIS OBSERVES THE RULE THAT CONTENTIONS BASED UPON THE FEDERAL OR STATE CONSTITUTION MUST BE MADE IN THE TRIAL COURT OR THEY ARE NOT PRESERVED FOR CONSIDERATION ON APPEAL OR WRIT OF ERROR. THEREFORE NO FEDERAL CONSTITUTIONAL QUESTION IS PRESERVED FOR REVIEW.

Illinois has steadfastly applied the rule that a contention based upon the Federal or State Constitution must not only be made in the trial court but must explicitly invoke the provision of the Federal or State Constitution that is relied upon and must show with reasonable particularity how and wherein the Illinois litigant contends that the constitutional provision is violated in his case.

Unless this is done, the contention is not preserved nor will it be decided as a constitutional question.

So far as we are aware, the most recent clear expression of this rule occurs in *Pierce* v. *Carpentier*, 20 Ill. 2d 526, which, though a civil suit involving the revocation of a driver's license, cites and is rested upon *People* v. *Touhy*, 397 Ill. 19, a leading Illinois case on the subject in the field of criminal law. In the *Pierce* case, the Supreme Court of Illinois held that

> "a naked statement that the statutes alleged were 'unconstitutional,' with the result that no precise constitutional issues could be formed or defended against", there being no "specific allegation as to the constitutional rights or provisions involved,"

the constitutional question tendered to the Supreme Court of Illinois was not preserved for decision.

In *People v. Touhy*, 397 Ill. 19, the Supreme Court of Illinois held that where a constitutional question based, not upon the alleged unconstitutionality of a statute, but upon the facts of the particular case, was suggested in the trial court but was not clearly and appropriately raised, the constitutional contention would not be entertained.

It is therefore respectfully submitted that *certiorari* should be denied in this case.

Respectfully submitted,

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DEC 26 1962

Supreme Court of the United States

No. 9

BEATRICE LYNUM

v.

THE PEOPLE OF THE STATE OF ILLINOIS

Petition for Certiorari filed April 14, 1961
Certiorari Granted June 25, 1962

Brief and Argument for Petitioner

IN THE

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NATURE OF THE CASE

Office-Supreme Court, U.S.
FILED
JAN 19 1963
JOHN F. DAVIS, CLERK

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OCTOBER TERM, A. D. 1962

NO. 9

BEATRICE LYNUM,

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THE STATE OF ILLINOIS,

Respondent.

PETITION FOR CERTIORARI FILED APRIL 13, 1962.
CERTIORARI GRANTED JUNE 25, 1962.

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